IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 21.12.2017
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.32615 to 32619 of 2017
and
W.M.P.Nos.35947 to 35951 of 2017

Karpagam Electronics,
rep. byits Partner,
V. Valliappan ...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST) (FAC)
Mettur Road Assessment Circle,
No.1, Brough Road,
Erode - 638 001. ...Respondent in all W.Ps.

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent passed in TIN : 33853041738/2011-12, 2012-13, 2013-14, 2014-15, 2015-16, dated 15.09.2017, 18.09.2017, respectively, and to quash the same and further, to direct the respondent to redo the assessment in accordance with law, after complying with the request of the petitioner, as per their reply, dated 25.09.2017.

For Petitioner : Mr.N. Murali

For Respondent : Mrs.S. Narmadha Sampath
Special Government Pleader

COMMON ORDER

Heard Mr.N.Murali, the learned counsel appearing for the petitioner and Mrs.S. Narmadha Sampath, the learned Special Government Pleader for the respondent. With consent on either side, the Writ Petitions are taken up for disposal.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is aggrieved by the assessment orders passed by the respondent under the TNVAT Act for the assessment years-2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

3. The petitioner is challenging the impugned orders on the ground that, there has been violation of principles of natural justice, and they did not have adequate opportunity to place materials before the Assessing Officer/respondent, especially, when the revision of assessment was based on the mismatch of the details available in the official website of the Department. To ascertain the fact, the learned Special Government Pleader was directed by this Court to get instructions from the Assessing Officer. Accordingly, written instructions has been given by the Assessing Officer, and a reading of the same, it appears that, though the Office Assistant of the respondent/Department went to the business premises of the petitioner, to serve the assessment orders on 19.09.2017 and 25.09.2017, the employee of the petitioner refused to receive the same, stating that, the owner (petitioner) is not available in the premises. Subsequently, when the assessment orders were sent by a registered post with acknowledgement card, the same returned with an endorsement 'Not claimed'. Again, when it was sent by a registered post on 25.10.2017, the same returned with an endorsement as 'Left Without Instructions'.

4. Thus, a perusal of the written instructions clearly shows the non-co-operative attitude on the part of the dealer/petitioner. This would be sufficient to dismiss the Writ Petition with exemplary costs. However, by doing so, the interest of the revenue will not protected. Rather, it will embolden the petitioner further to indulge in such attempts. Therefore, this Court is inclined to issue appropriate direction, so that, the interest of the revenue would be safeguarded, at the same time, the petitioner is given one more opportunity to go before the Assessing Officer to substantiate their case.

5. Accordingly, these Writ Petitions are disposed of, by directing the petitioner to pay 25% of the disputed tax for each of the assessment years, and such payment shall be effected within a period of fifteen days from the date of receipt of a copy of this order. If the petitioner complies with this condition, then, they will be entitled to treat the impugned assessment orders as show cause notices, and submit their objections within 15 days thereafter, enclosing all relevant records to fortify their claim. After the objections/reply is received in full form, the respondent shall afford an opportunity of personal hearing to the petitioner's Authorized Representative, and redo the assessment in accordance with law. Till the above exercise is completed, no coercive action shall be initiated against the petitioner for recovery of the balance tax and penalty, as quantified in the impugned assessment orders. It is made clear that, if the petitioner does not comply

with the condition imposed by this Court, then, the respondent shall proceed further pursuant to the impugned assessment orders in accordance with law.

6. In the result, all these Writ Petitions are disposed of, as stated supra. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

sd

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (ST) (FAC)
Mettur Road Assessment Circle,
No.1, Brough Road,
Erode - 638 001.

+1cc to Government Pleader SR.No.92427
+5cc to Mr.N.Murali, Advocate SR.No.92020

RK(CO)
sm:20.1.2018

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