IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22214 and 22215 of 2017
and
W.M.P.Nos.23244 and 23245 of 2017

M/s.Shanmuga Builders Private Ltd.,
Rep. By its Managing Director
Mrs.S.Malli W/o.Dr.U.Shanmugam,
No.3 (Old No.2), First Floor,
Gandhi Street, Kanagam, Taramani Post,
Chennai - 113. ...Petitioner in both WPs

Vs.

The Commercial Tax Officer,
Adyar Assessment Circle,
Chennai - 28. ...Respondent in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records in TIN 33620962621/2013-14 and TIN 33620962621/ 2014-15, dated 13.07.2017 and 13.07.2017 respectively, relating to the assessment for the financial years 2013-14 and 2014-15 respectively, on the file of the respondent and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar
For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Heard Mr.M.P.Senthil Kumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent, and with the consent of either side, the writ petitions itself are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of TNVAT Act, 2006, is before this Court challenging the assessment orders passed under the said Act for the years 2013-14 and 2014-15.

3. The petitioner is a Works Contractor in civil works and opted to pay tax at the compounded rate under Section 6 of the TNVAT Act, 2006 by letter dated 17.04.2013 and filed return in Form 'L'. The respondent issued show cause notices dated 26.06.2015 and 20.05.2016 respectively for both the financial years alleging that there is a difference between turnover reported as per the balance sheet and that needs to be explained. Further, it was alleged that the payment of compounded tax is eligible only for the dealer making the local purchase and not eligible for the goods purchased from other States or other Countries and since the petitioner has not furnished the details for the said turnover, it would be treated as purchase effected from other States and the petitioner will not be eligible for payment of tax at compounded rate and tax will be levied under Section 5 of the TNVAT Act. For the financial year 2014-15, it was alleged that the petitioner has disclosed the total sales only to the tune of Rs.2,39,31,559/- as per the profit and loss account, whereas they have disclosed the total sales to the tune of Rs.2,99,48,825/- as per Form WW report, which leads to a difference and this has to be reconciled. Therefore, the respondent inferred that there is corresponding purchase suppression and the short-accounting sale is examined with reference to their correlated purchase. The details of which were furnished in the notice dated 20.05.2016.

4. The case of the petitioner is that in response to both notices, he had appeared in person and explained the nature of transaction and as to how they are entitled to pay the taxes at compounded rate. After about the period of 2 years / 1 year, the impugned order has been passed by the respondent stating that no objections have been received from the petitioner. Therefore, the proposal in the notices dated 26.06.2015 and 20.05.2016 is confirmed. It is not known why the Assessing Officer did not take any action immediately after the petitioner had appeared in person in response to the notices dated 26.06.2015 and 20.05.2016 respectively.

5. Thus, when the Assessing Officer, who appears to be new officer, proposed to initiate action, after a gap of 2 years / 1 year, the principles of natural justice would require that the Assessing Officer put the dealer on notice and afford an opportunity of personal hearing and then assessment should have been completed. However, in the instant case, without fresh notice to the petitioner, assessments have been completed. Therefore, it is held that there is violation of the principles of natural justice.

6. Thus, for the above reasons, the petitioner is entitled to go before the Assessing Officer and put-forth submissions on merits. Accordingly, the writ petitions are

disposed of by directing the petitioner to treat the impugned proceedings as show cause notices and submit their objections within a period of 15 days from the date of receipt of a copy of this order. On objections being received, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment for both the financial years in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkm
To

The Commercial Tax Officer,
Adyar Assessment Circle,
Chennai - 28.

+ 1 cc to Mr.G. Baskar, Advocate Sr.60031
+ 1 cc to Special Government Plader SR.60177

W.P.Nos.22214 and 22215 of 2017
and
W.M.P.Nos.23244 and 23245 of 2017

GJ(CO)
EU(30/10/2017)