In the High Court of Judicature at Madras

Dated : 17.2.2017

Coram :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.3951 to 3956 of 2017

& WMP.Nos.4029 to 4034 of 2017

M/s.Supreme Trading Company, rep.
by its Proprietor Mr.A.Ibrahim Kaleel ...Petitioner in all WPs

Vs

1.The Assistant Commissioner (CT),
Central II Assessment Circle,
Tirupur.

2.The Commercial Tax Officer,
(Enforcement), Group I, Coimbatore. ...Respondents in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN/ 33262463506/2010-11, TIN/ 33262463506/2011-12, TIN/ 33262463506/2012-13, TIN/ 33262463506/ 2013-14, TIN/33262463506/2014-15 and TIN/ 33262463506/2015-16, quash the impugned orders dated 30.12.2016 as passed in violation of principles of natural justice and further direct the first respondent to pass a fresh assessment order after granting reasonable opportunity to the petitioner.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In these writ petitions, the petitioner has challenged the orders of assessment passed under the said Act for the years 2010-11 to 2015-16. The orders of assessment were passed by confirming the proposal in the show cause notices on the ground that the petitioner had not submitted any reply.

3. According to the petitioner, the show cause notices dated 07.12.2016 were received by them for all the assessment years only on 22.12.2016. The petitioner sent a reply dated 08.1.2017 referring to their application, which were filed under the Right to Information Act on the very same day. The petitioner raised various issues and sought copy of the documents and reasonable time to furnish their objections.

4. It is relevant to note that the show cause notices dated 07.12.2016, which were stated to have been received by the petitioner on 22.12.2016, provided for 15 days time to submit their objections. Thus, according to the petitioner, the Assessing Officer could not have passed the orders well within the period of 15 days. The petitioner has relied upon the acknowledgment card issued by the Postal Authorities to show that their interim reply dated 08.1.2017 was received by the office of the first respondent on 12.1.2017 at 10.15 AM. The petitioner referred to a cover, through which, the orders of assessment were communicated to them wherein it is shown that the said cover was dispatched by registered post with acknowledgment due on 20.40 Hours. It is, therefore, submitted that the impugned orders of assessment are in gross violation of the principles of natural justice.

5. The learned Additional Government Pleader, on the other hand, would submit that it is to be verified as to whether the postal cover, relied upon by the petitioner, is, in fact, the cover, in which, the assessment orders were communicated.

6. Be that as it may, the postal acknowledgment produced by the petitioner shows that the communication sent by the petitioner was received by the office of the first respondent on 12.1.2017. If that is the case, the first respondent should have furnished documents sought for by the petitioner or at least given a reply stating as to for what reasons, the documents cannot be furnished. That apart, the assessment orders could not have been passed before the cut off date given in the show cause notices i.e 15 days from the date of receipt of the notices. Hence, this Court is of the considered view that the first respondent was not justified in completing the assessments.

7. However, for that reason, this Court is not inclined to set aside the assessment orders because the assessment orders are, in fact, a verbatim reproduction of the show cause notices. Therefore, the petitioner can be directed to treat the impugned orders as show cause notices and submit their reply/objections.

8. Accordingly, the writ petitions are disposed of by directing the petitioner to treat the impugned orders as show cause notices and if the petitioner seeks copies of the documents or records, the first respondent shall provide copies of the same wherever it is permissible and viable. On receipt of the copies of documents, the petitioner is directed to submit their objections within a period of ten days therefrom and after receipt of the objections, the first respondent shall afford an opportunity of personal hearing and redo the assessments in accordance with law within 15 days thereafter. Till fresh orders of assessment are passed, no coercive action shall be initiated by the first respondent to recover tax as computed in the assessment orders. No costs. Consequently, the above WMPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

RS

To

1.The Assistant Commissioner (CT),
Central II Assessment Circle, Tirupur.

2.The Commercial Tax Officer,
(Enforcement), Group I, Coimbatore.

+1 CC to Government Pleader, High Court, Chennai Sr.No.10518

+1 CC to Mr.P.Rajkumar Advocate Sr.No.10431.

WP.Nos.3951 to 3956 of 2017&
WMP.Nos.4029 to 4034 of 2017

KJI(CO)
KP(07.03.2017)