IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM :
THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
W.P.Nos.1483 to 1487 of 2017 and
W.M.P.Nos.1391 to 1395 of 2017

Exegelo Exports,
Represented by its partner,
N.Harish Ramasamy,
No.10, Lakshmi Street,
Villvakkam,
Chennai - 600 049 .. Petitioner in all W.Ps.

vs.

The Commercial Tax Officer,
JJ Nagar Assessment Circle,
Shop No.38 & 39,
Tamil Nadu Slum Clearance Board-
-Shopping Complex, Thirumangalam,
Anna Nagar,
Chennai 600 040. .. Respondent in all W.Ps.

Prayer in W.P.No.1483 of 2017: The writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN/33761349477/2010-11, dated 31.10.2016 quashing the same.

Prayer in W.P.Nos.1484, 1485 & 1486 of 2017: The writ petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN/33761349477/2011-12, TIN/33761349477/2012-13, TIN/33761349477/2013-14, respectively, dated 30.11.2016 quashing the same.

Prayer in W.P.No.1487 of 2017: The writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN/33761349477/2014-15, dated 31.10.2016 as rectified in TIN/33761349477/2014-15, dated 16.12.2016 quashing the same.

For Petitioner in all W.Ps. : Mr.Inbarajan

For Respondent in all W.Ps. : Mr.K.Venkatesh Government Advocate

C O M M O N   O R D E R

Heard Mr.Inbarajan, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who is appearing for the respondent.

2. With the consent on either side, all these writ petitions are taken up for final disposal.

3. The writ petitioner is a registered dealer on the file of the respondent and registered under the provisions of the Tamil Nadu Value Added Tax, (TNVAT) Act, 2006. The petitioner has challenged the orders of assessments passed under the said Act, for the assessment years 2010-11 to 2014-15.

4. The first and foremost ground of challenge is that the impugned orders have been passed by violating the principles of natural justice and no personal hearing was granted. It is submitted that the Assessing Officer, who had passed the impugned orders, had taken charge as the Commercial Tax Officer, JJ Nagar, Assessment Circle during October 2016, and passed the impugned orders though the petitioner had filed their reply about one year prior to 28.08.2015. The second ground raised by the petitioner is that there are glaring errors in the assessment orders which can be rectified, If the respondent had afforded an opportunity of personal hearing to the petitioner which was not granted to them.

5. To substantiate the said submission, the learned counsel for the petitioner referred to certain details as illustrations pertaining to the assessment years 2010-11 and 2012-13. It is submitted that in respect of the assessment year 2010-11, the nature of the issue as per the assessment order under the head "Local Sales Omission" is Rs.4,74,700/- and for Export Sample Sales assessed as Rs.10,47,392/-. Once again, both these turnovers were clubbed and shown as Rs.15,22,092/- under the head "Sales Difference". Further, with regard to the assessment year 2012-13, with regard to the Sales Omission, the turn over is shown as Rs.98,32,235/- whereas the same turn over has been split up into three and once again shown under the head "Local Sales" and rejected leather sales to exporters against Form-H and exports samples. Therefore, it is the submission of the learned counsel for the petitioners that these are glaring errors in the impugned assessment orders and if an opportunity of personal hearing had been granted, the petitioner would have been able to demonstrate before the assessing officer that there is no cause for revising of the assessment.

6. In the counter affidavit filed by the respondent, there is an attempt made by the Assessing Officer to give factual explanation as to how the assessment is justified. However, when the petitioner was issued notice proposing revision of assessments on 03.08.2015 and they had submitted a reply on 28.08.2015, when the matter is taken up by the Present Assessing Officer after one year, fairness would demand that an opportunity should be given to the petitioner. It has been consistently held by this Court that when complicated facts are involved, it is always better for the Assessing Officer to afford an opportunity of personal hearing, rather than to proceed solely based on the objections/reply to the show cause notices. Therefore, this Court is of the view that the assessments have to be redone after affording an opportunity of personal hearing to the petitioner.

7. In the light of the above, all the Writ Petitions are allowed and the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration, after giving opportunity to the petitioner to submit their additional objections, if any, within a period of seven days, from the date of receipt of a copy of this order, after which the respondent shall afford an opportunity of personal hearing to the petitioner, consider the objections and the documents and the Books of Accounts that the petitioner may produce and re-do the assessment and pass a speaking order on merit and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsi/klt

To
The Commercial Tax Officer,
JJ Nagar Assessment Circle
shop Nos.38 & 39
Tamil Nadu Slum Clearance Board shopping Complex,
Thirumangalam, AnnaNagar
Chennai-40

+1 cc to Mr.N.Inbarajan Advocate sr 46823
+1 cc to Special Government Pleader(Taxes) sr 46818

W.P.No.1483 to 1487 of 2017
and
W.M.P.Nos.1391 to 1395 of 2017

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