IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P. Nos. 16584 to 16588 of 2017
and
WMP.Nos.17954 to 17958 of 2017

M/s. Maansarovar Automobile,
Rep., by its Partner Mr.Pankaj Kankaria,
New No.105, 100 feet Velachery Bypass Road,
Velachery (Opposite to Fast Track Showroom)
Chennai - 600 042. ... Petitioner in all W.Ps.,

Vs

The Assistant Commissioner (CT)
Velachery Assessment Circle,
No. 46,Pasumpon Muthuramalingar Salai,
R.A.Puram, Chennai -600 028. ... Respondent in all W.Ps.

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN.33840987914/2011-12, 2012-13, 2013-14, 2014-15 & 2015-16, dated 19/05/2017, quash the same and further direct the respondent to pass orders afresh after affording an adequate and real opportunity including an opportunity of being heard and thereafter pass orders in accordance with law.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.K.Venkatesh,
(For all W.P.s) Government Advocate (Tax)

ORDER

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent on either side, the writ petitions themselves are taken up for final disposal.

2. The petitioner is a registered dealer on the file of the

respondent engaged in the business of Automobile and Spare Parts. . The petitioner is a retailer of M/s.Honda Motor India Private Limited, whose registered office is situated in Uttar Pradesh with warehouse and the main office in the State of Tamil Nadu. The petitioner would state that the goods are manufactured by M/s.Honda Motors in Uttar Pradesh, which are stock transferred to Chennai and sold to the petitioner inside the State of Tamil Nadu against tax invoice raised on the petitioner in the State of Tamil Nadu. The petitioner on receipt of the said goods, re-sells the same inside the State of Tamil Nadu and has been periodically filing the returns and availing Input Tax Credit and remitting output tax without default. In these writ petitions, the petitioner challenges the assessment orders for the years 2011-2012 to 2015-2016 under the provisions of The Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act). A common show cause notice was issued by the respondent on the petitioner dated 28.04.2017 for all the 5 assessment years proposing to reverse the Income tax credit availed by the petitioner on inter-state purchases for the reasons set out in the notices. The petitioner was granted 15 days time to submit their objections and also availed an opportunity of being heard in person within the said period. The petitioner by reply dated 16.06.2016 explained their stand in the matter and also referred to the decision of this Court in the case of Sujana Towers Limited vs. The Assistant Commissioner (CT) in W.P.No.30304 of 2014, dated 20.11.2014. The petitioner has also specifically sought for an opportunity of personal hearing. The petitioner had submitted separate objection for each of the assessment years. However, much prior to the said date on which the petitioner submitted their objection by Registered Post, the respondent has passed the impugned order on 19.05.2017. On a reading of the impugned order, it is seen that the petitioner was instructed to furnish the copy of the audited balance sheet along with trading and profit & loss account statement for the relevant years along with the income tax statement. It is stated in the impugned order that the petitioner has not produced any of the documents as directed to be produced and therefore, the proposal in the show cause notice dated 28.04.2017, was confirmed by passing the impugned assessment orders.

3. The petitioner's specific case is that he was granted time till 18.05.2017 to produce those documents and on 15.05.2017, the petitioner consultant went to the office of the respondent and the respondent was not there, as there was a training programme for the Good and Services Tax. Therefore, the staff of the office of the respondent directed the consultant to come to the office after two days. To affirm the above submissions, an affidavit has been filed by the partner of the petitioner.

4. Considering the fact that the petitioner was afforded an opportunity of personal hearing, in which they were instructed to produce certain documents, the Assessing Officer could have granted one more opportunity to enable the petitioner to produce those documents. Furthermore, this court is not inclined to disbelieve the stand taken in the additional affidavit stating that the consultant went to the office of the respondent on 15.05.2017. In any event, since the matter pertains to five assessment years commencing from the year 2011-2012, this Court is of the view that reasonable opportunity should be granted to the petitioner to submit the documents, which they are in possession to enable the Assessing officer to take a decision on the merits rather than to make a best of Judgment assessment.

5. In the light of the above, the Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration, who shall fix a date for personal hearing, within 15 days from the date of receipt of a copy this order and afford an opportunity to the petitioner/consultant to appear before the respondent to produce the documents and make oral submissions and thereafter, the respondent shall pass a speaking and reasoned order and complete the assessment in accordance with law.

The Writ Petitions are allowed with the above directions. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
   Velachery Assessment Circle,
   No. 46,Pasumpon Muthuramalingar Salai,
   R.A.Puram, Chennai -600 028.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.46664
+1cc to the Government Pleader, S.R.No.46236

W.P.Nos.16584 to 16588 of 2017

RR(CO)
CS/21/07/17