In the High Court of Judicature at Madras

Dated : 10.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.27073 to 27079 of 2017
& WMP.Nos.28888 to 28894 of 2017

M/s.APT Leather, rep.by its
Authorized Signatory,
Pernambut, Vellore ...Petitioner in all WPs

Vs

The Commercial Tax Officer (Main),
Gudiyatham (West) Assessment
Circle, Gudiyatham, Vellore District.
...Respondent in all Wps

COMMON PRAYER TO ALL Wps:PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent, quash the assessment proceedings respectively in TIN No. 33394342082/2013-14, TIN No.33394342082/2015-16, TIN No. 33394342082/2011-12, TIN No.33394342082/2014-15, TIN No. 33394342082/2010-11, TIN No.33394342082/2012-13, all dated 31.3.2017 and TIN No. 33394342082/2016-17 dated 11.8.2017 and direct the respondent to pass fresh orders under the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Act, 1956 separately as per law after providing an opportunity of personal hearing to the petitioner.

For Petitioner in all WPs: Mr.C.Bakthasiromani

For Respondent in all WPs : Mrs.Narmadhasampath
Special GP Asst.by
Mr.K.Venkatesh GA

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent. 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 respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The petitioner is aggrieved by the impugned assessment orders passed for the years 2010-11 to 2016-17.

3. Four points have been raised by the petitioner. Firstly, the revision notices dated 28.1.2017 did not even provide for an opportunity to the petitioner to submit their objections and that no time limit was prescribed for submitting the objections. Secondly, though the petitioner had submitted their objections dated 23.3.2017, which were received by the respondent on the very same date giving acknowledgments in the letter delivery book, there has been no reference in the impugned assessment orders as to the receipt of the objections. Thirdly, though the petitioner specifically sought for an opportunity of personal hearing in the reply dated 23.3.2017, no such opportunity was provided. Lastly, the respondent imposed penalty at 300% for the assessment year 2016-17 under the State Act, which is without jurisdiction.

4. When the writ petitions came up before this Court for admission on 23.10.2017, Mrs.Narmadha Sampath, learned Special Government Pleader accepted notice and took time to get instructions. Accordingly, written instructions were obtained and the cases were heard on 31.10.2017, on which date, it was submitted by the learned Special Government Pleader that the Assessing Officer inspected the place of business of the petitioner and found the same to be locked. She further submitted that on enquiry, it was informed that nobody was carrying on business in the premises and that the objections were not given by the petitioner within the time permitted and that somehow, the dealer sensed as to the making of draft assessment orders ready and thereafter, had given their objections on 23.3.2017. According to her, the respondent doubted the bona fides of the transactions done by the petitioner. After recording the said submissions on 31.10.2017, this Court directed the petitioner to produce proof to show that they were carrying on business and had submitted their objections.

5. Today, certain documents are filed by the learned counsel for the petitioner in the form of additional typed set of papers, which contains a copy of the rental agreement dated 05.4.2004, copies of the income tax returns for the year 2015-16 dated 29.9.2015, a copy of Form JJ way bills generated on line dated 12.6.2017, a copy of service tax payment details dated 30.6.2017, a copy of the order passed by the Income Tax Officer for the assessment year 2015-16, dated 07.9.2017 and a copy of

year wise purchase and sales details in respect of the petitioner for the claim of input tax credit for the assessment years 2010-11 to 2016-17, dated 31.10.2017. It is further pointed out that the very same officer, namely the respondent herein endorsed in the letter delivery book. However, without reference to the objections, the impugned assessment orders have been passed.

6. On a perusal of the impugned assessment orders, it is evidently clear that in the impugned assessment orders, there is no reference to the petitioner's objections dated 23.3.2017, which were received by the officer himself. In the written instructions given to the learned Special Government Pleader, the respondent accepted that he had received the objections. If the respondent received the objections, he should have afforded an opportunity of personal hearing to the petitioner, considered the documents that they may produce and then completed the assessment. Having not done so, the failure of the respondent would render the impugned orders unsustainable and are in violation of the principles of natural justice. With regard to the genuineness of the dealer, it is seen that the registration certificate of the petitioner is still valid. Therefore, the respondent should consider the documents that may be produced by the petitioner to ascertain the genuineness.

7. For all the above reasons, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for a fresh consideration. The respondent shall consider all the documents that may be produced by the petitioner by affording an opportunity of personal hearing and after considering the documents, the respondent shall redo the assessment in accordance with law. The respondent shall ensure that there are no errors in the fresh assessment orders that may be passed by him, as this Court finds that in certain assessment orders, the first page refers to the proceedings under the State Act and in the second page, the assessments are completed under the Central Act. The respondent is directed to pass separate assessment orders under the State Act and the Central Act. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer (Main), Gudiyatham (West) Assessment Circle, Gudiyatham, Vellore District.

+1cc to Mr.Baktha Sironmani, Advocate SR.No.80697
+1cc to Special Government Pleader(Taxes) SR.No.80060

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SSI(CO)
GN(04/12/2017)