IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP Nos. 27992 to 27997 of 2017
& WMP Nos. 30032 to 30037 of 2017

Sri Murugan Electrical Stores,
Rep.by Proprietor, M.Krishnamoorthy,
No.90, Thiruchengode Road,
Paramathi, Namakkal- 637 207. ... Petitioner in all W.Ps.

Vs.

1. The Commissioner of Commercial Taxes,
   Chepauk, Chennai-600 005.

2. The Deputy Commissioner of Commercial Tax,
   Mohanur Road, Old Munsif Court Campus,
   Namakkal-637 001, Namakkal District.

3. The Assistant Commissioner (Sales Tax) (FAC)
   Namakkal (Rural), Mohanur Road,
   Old Munsif Court Campus,
   Namakkal- 637 001, Namakkal District.

... Respondent in all W.Ps.

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in TIN: 33883101716/2010-11, 2011-12, 2012-13, 2013-14, 2014-15 & 2015-16, respectively, dated 14.09.2017 and to quash the same consequently direct the third respondent to pass orders afresh after taking into consideration the objections of the petitioner dated 22.09.2017, and providing an opportunity of personal hearing the petitioner herein.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N   O R D E R

Heard Mr.S.Saravanan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents. With consent on either side, these writ petitions are taken up for final disposal.

2. The petitioner is a registered dealer on the file of the third respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as "the TNVAT Act"). The petitioner had opted to pay tax under Section 3(4) of the TNVAT Act, on the ground that their turnover never exceeded Rs.50 Lakhs. The third respondent, on perusal of the monthly returns filed by the petitioner for the years 2010-11, 2015-16, issued a notice dated 10.02.2017, stating that on surprise inspection, the turnover reported on the tax paid details were verified and the petitioner has not filed purchase details while filing monthly return for the relevant years. However, on verification, the system revealed that they have effected purchases from local registered dealers, which were utilized in the course of business and the corresponding sales was worked out and mentioned in the notice. Therefore, the third respondent came to the prima facie conclusion that the taxable turnover of the petitioner exceeded Rs.50 Lakhs, and he cannot exercise his option under Section 3(4) of the TNVAT Act, and they are liable to pay tax under Section 3(2) of the TNVAT, Act. Further, it was stated that the they have not filed opening and closing stock details and in the absence of purchase, sales, opening stock details, the entire purchases are deemed to be sold in the course of the business and assessed to Tax under Section 3(2) of the TNVAT Act. Therefore, the third respondent opined that the purchases were not eligible for availment of input tax credit and hence, proposed to assess the taxable turnover for the relevant years and demanded higher rate of tax. The petitioner was granted 15 days time to file their objections. By representation dated 03.03.2017, the petitioner informed the third respondent that due to his ill-health, he is unable to file objections and requested for one month time. This representation was received in the office of the third respondent by making an endorsement in the letter delivery book on 09.03.2017. 3. The petitioner's case is that after he had fully recovered, he had contacted the consultant and prepared the objections and submitted the same on 22.09.2017, which was acknowledged by the third respondent by signing the letter delivery book. However, subsequently, the petitioner has received the impugned assessment orders and found them to be dated 14.09.2017, in which it has been stated as if the

petitioner has not filed any objection. Therefore, they have filed these writ petitions challenging the assessment orders on the ground that they have been passed in violation of principles of natural justice and as it has been passed without considering the objection of the petitioner. The endorsement made in the letter delivery book on 22.09.2017, cannot be denied by the third respondent and there is no material placed before this Court to deny the same. If the third respondent had passed the assessment orders on 14.09.2017 itself, then she could have very well made such an endorsement in letter delivery book and refused to entertain the objections. The fact that the objections were entertained on 22.09.2017 itself, presupposes that there was no order of assessment passed until such date. Thus, the date given in the assessment orders as 14.09.2017, cannot be taken to be the date on which the assessment orders have been passed, since the third respondent has received the objections on 22.09.2017, without any demur and without recording that she has already passed an assessment order. The above finding is sufficient to hold that the impugned proceedings have been passed in violation of principles of natural justice.

4. For the above reasons, these writ petitions are allowed, the impugned orders are setaside and matters are remanded to the third respondent for fresh consideration, who shall consider the petitioner's objections dated 22.09.2017, and afford an opportunity of personal hearing and if any other further clarification is required, the third respondent is directed to call for records, documents, statement of accounts etc., and after discussing the case thoroughly with the petitioner, redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sm/abr

To

1. The Commissioner of Commercial Taxes,
   Chepauk, Chennai-600 005.

2. The Deputy Commissioner of Commercial Tax,
Mohanur Road, Old Munsif Court Campus,
Namakkal-637 001, Namakkal District.

3. The Assistant Commissioner (Sales Tax) (FAC)
Namakkal (Rural), Mohanur Road,
Old Munsif Court Campus,
Namakkal- 637 001, Namakkal District.

+1cc to Mr.S.Saravanan, Advocate SR.No.80641
+1cc to Special Government Pleader(Taxes) SR.No.80905

WP Nos. 27992 to 27997 of 2017

SK(CO)
GN(06/12/2017)