BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.19409 to 19413 of 2015 and
6849 of 2016 and 8797 of 2017
and
W.A.(MD) No.945 of 2017
and
all connected miscellaneous petitions

M/s.Visvas Builders
represented by its
Proprietor M.Dharmalingam ... Petitioner in all Writ Petitions and Appellant in WA(MD)No.945/2017

vs.

The Assistant Commissioner (CT)
Dindigul – V Assessment Circle,
Commercial Taxes Buildings,
Dindigul. ... Respondent in WP(MD)Nos.19409 to 19413/15,6849/2016 and 1st Respondent in WP(MD)No.8797/2017 and WA(MD)No.945/2017

The Branch Manager,
IDBI Bank, Dindigul ...2nd Respondent in WP(MD)No.8797/2017 and WA(MD)No.945/2017

Prayer in W.P(MD)Nos.19409 to 19413 of 2015 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33525381511/2007-08, 2009-10, 2010-11, 2011-12, 2012-13 dated 15.09.2015, 30/9/2015 respectively and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after affording an opportunity of being heard to the petitioner by considering the reply dated 28.08.2015 filed by the petitioner and the circular issued by the Commissioner of Commercial Taxes Chennai in Circular No.54/2014 Ref.No.D3/34875/2014 dated 14.11.2014, which in such time as may be directed by this Court.

Prayer in WP(MD). 8797/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for records in TIN 33525381511/15-16/A3 dated 27.04.2017 on the file of the respondent and quash the same as illegal, arbitrary and against law.

Prayer in WP(MD). 6849/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records in TIN 33255381511 dated 21.3.2016 on the file of the respondent and quash the same as illegal, arbitrary and against law.

Prayer in WA(MD). 945/ 2017 :

Writ Appeal preferred under Clause 15 of Letters Patent against the order of the learned Single Judge passed in WMP(MD). No.6751 of 2017 in WP(MD).No.8797 of 2017 dated 04/05/2017 on the file of this Honourable Court.

Prayer in WMP(MD). 6751/ 2017 in WP(MD)No.8797/2017 :

To stay all further proceedings in pursuance of the impugned notice in TIN 33525381511/15-16/A3 dated 27.04.2017 on the file of the respondent, pending disposal of the writ petition.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Karthikeyan, AGP

C O M M O N O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J)

The revision orders dated 15 September 2015 revising the earlier assessment and calling upon the assessee to pay the balance amount have been questioned in W.P.(MD) Nos.19409 to 19413 of 2015.

2.The Assessee has filed W.P.(MD) No.6849 of 2016 for quashing the order dated 21 March 2016, calling upon the writ petitioner to pay the tax arrears of Rs.5,30,624/- for the assessment year 2007-08 to 2012-13. It was stated in the said notice that if the tax arrears are not remitted in full in 36 instalments, attachment proceedings would follow.

3.In W.P.(MD) No.8797 of 2017, the order bearing TIN 33425381511/15-16/A3 dated 27 April 2017 issued by the respondent to the Branch Manager, IDBI Bank, Dindigul for recovery of a sum of Rs.63,46,484 issued under Rule 9(4) read with Section 45 of Tamil Nadu VAT Act 2006 has been questioned.

4.Not satisfying with the conditional interim order dated 04 May 2017 made in W.P.(MD) No.8797 of 2017, the petitioner has filed W.A.(MD) No.945 of 2017.

5.All the writ petitions as well as the writ appeal were taken up for final disposal with consent.

6.It is seen that the assessing authority issued revision notices calling upon the writ petitioner to offer their objections within 15 days. In the revision notice, the assessing authority proposed to levy tax in respect of the escaped turn over. Upon the receipt of the said revision notices, the writ petitioner submitted his reply dated 28 August 2015. In his reply, the writ petitioner specifically prayed for affording the opportunity of personal hearing. But, without affording such opportunity, the assessing authority straightaway passed the impugned order dated 15.09.2015.

7.Though the petitioner has raised various contentions assailing the validity of the impugned order revising the earlier assessments, these writ petitions are to be allowed on a short ground viz., omission on the part of the assessing authority to afford the opportunity of personal hearing. Section 27 of Tamil Nadu VAT Act, 2006 states that before passing revision order, the assessing authority must give reasonable opportunity to the assessee to show cause against the proposed revision.

8.The Division Bench of Madras High Court in the decision reported in *(2010) 33 VST 333 (Mad) - SRC Projects P. Ltd., V. CCT (MAD)* laid down that principles of natural justice cast an obligation on the assessing authority to give personal hearing to assessee when sought. In this case, such a personal hearing was in fact sought as could be seen in the reply given to the show cause notice. But, the order of revised assessment was passed without considering the said request or personal hearing. Therefore, on this ground, we are inclined to set aside the orders impugned in these writ petitions. Since the attachment and recovery orders are only consequential in nature, they are also liable to be set aside. We accordingly, quash the orders impugned in these writ petitions and remit the matter to the file of the assessing authority. The Assessing Authority shall afford an opportunity of personal hearing to the assessee and pass final orders. It is open to the writ petitioner to submit all his objections during such personal hearing.

9.All the writ petitions are allowed as indicated above. In view of the common order passed, the appeal in W.A.(MD) No.945 of 2017 filed not satisfied with the conditional interim order dated

04 May 2017 made in W.P.(MD) No.8797 of 2017 is dismissed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Dindigul – V Assessment Circle,
Commercial Taxes Buildings,
Dindigul.

+One cc to The Special Government Pleader, SR.Nos.66398,66413 and 66399

skm/Arul
RL/3C/4P/SKN/RSK/SAR1/2/8/2017

W.P(MD)Nos.19409 to 19413 of 2015 and 6849 of 2016 and 8797 of 2017 and
W.A.(MD) No.945 of 2017
17.07.2017