BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.13257 to 13259 of 2017
and WMP Nos.10326 to 10328 of 2017

Great White Global Private Ltd.
Rep. by its Authorised Signatory
Meet Hemant Shah ... Petitioner in W.P.Nos.13257 to 13259

vs.

1. The Commissioner of Commercial Taxes,
O/o. The Principal and
Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

2. The Assistant Commissioner (CT)
Chokkikulam Assessment Circle,
Commercial Taxes Compled,
Dr.Thangaraj Salai, Madurai. ... Respondents in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writs of Certiorari to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33601782185/2013-14,2014-15,2015-16, respectively dated 15.05.2017 and quash the same.

For Petitioner : Mr.R.Veeramanikandan
For Respondents : Mr.Raja Karthikeyan
Additional Government Pleader

COMMON ORDER

By consent of both sides, these writ petitions are taken up for final disposal.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3. The petitioner in all these writ petitions is running a business in the name and style of Great White Global Private Limited, 129-B/3, Palam Station Road, Sellur, Madurai, dealing with

electrical goods and regularly filing monthly returns under Tamil Nadu Value Added Tax Act. It is further submitted that they are acting as the Clearing and Forwarding agent for their Head Office at Mumbai and procuring goods from other States and selling the same within the State of Tamil Nadu, after collecting taxes and duly paying the same vide monthly returns. It is their further case that they are not claiming any input tax credit, as they have no purchases within the State of Tamil Nadu.

4. However, it is their case that on 22.12.2015, an inspection took place in their premises and pursuant to which, the 2nd respondent issued a notice alleging that meagre difference between the purchase and sales reported through monthly returns and the annual turnover reported as per the Form WW audit statement and on this basis, they proposed to levy tax. However, after issuance of the notice dated 09.02.2017 for the assessment year 2013-14, another revised notice for assessment year 2014-15 has been issued on 21.04.2017. However, there is no revised notice for the assessment year 2015-16. The petitioner, after receiving the said revised notice dated 21.04.2017, submitted a letter on 02.05.2017 requesting for grant of one month time to furnish explanation/objection to the aforementioned revised notices by Registered Post. Though the same was received by the respondents on 28.05.2017, they passed the final order, as if the petitioner has not sought for any time for filing their reply/objections.

5. Mr.Raja Karthikeyan, Additional Government Pleader, who takes notice for the respondents, submitted that when the petitioner was issued with notice on 09.02.2017 for the assessment years 2013-14, 2014-15 and 2015-16, after verification of the documents, official records, the 2nd respondent has come to the conclusion that some of the calculations were not properly made. Therefore, a revised notice was issued in the aforementioned assessment year. However, the petitioner, on receipt of the same, has not come forward to give his reply within a reasonable time. Therefore, the impugned orders have been passed.

6. However, this argument does not hold good for the reason that when the petitioner has sent his letter requesting grant of one month time to submit his reply/objections for the three assessment years, namely, 2013-14, 2014-15 and 2015-16, which has been acknowledged by the respondents on 08.05.2017, it is not known how the respondents have ignored the said request letter sent by the petitioner through Registered Post on 02.05.2017. It is to be noted that the respondents have not given reasonable opportunity to the petitioner to explain and defend their case. Therefore, the respondents cannot proceed on the basis of the impugned assessment orders dated 15.05.2017, without following the principles of nature justice and without considering the request of the petitioner for grant of time to submit his reply/objections. As it has not been done in these cases, the impugned orders are liable to be set aside.

7. In view of the foregoing reasons, these writ petitions are allowed and the impugned orders are set aside. The petitioner is directed to submit his reply/objections within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents shall consider the same and pass orders on merits and in accordance with law within a period of six weeks thereafter. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
O/o. The Principal and
Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

2.The Assistant Commissioner
Chokkikulam Assessment Circle,
Commercial Taxes Compled,
Dr.Thangaraj Salai, Madurai.

+ 3 CC TO Mr.B.ROOBAN, ADVOCATE IN SR No. 66230 to 66232
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 66986

MRN/RR
TE/SKN-RSK/SAR-II : 28/08/2017 : 3P/7C

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