In the High Court of Judicature at Madras

Dated : 03.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.20024 to 20028 of 2018 &
WMP.Nos.23466 to 23470 of 2018

Tvl.Sri Amman Timber Depot ...Petitioner
Jayamkondam.

Vs

The Commercial Tax Officer,
Jayamkondam Assessment Circle,
Jayamkondam, Ariyalur District. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records respectively for the assessment years 2011-12, 2012-13, 2014-15, 2013-14 and 2015-16 in TIN No.33333622278, all dated 13.3.2018 on the file of the respondent, quash the same as illegal and against the judgment reported in 99 VST 343 and direct the respondent to pass orders in accordance with law.

For Petitioner : Mr.A.Thiagarajan, SC for
Mr.M.Nallathambi
For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner has challenged the assessment orders passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years from 2011-12 to 2015-16.

3. The primary ground, on which, the assessment orders have been challenged is by contending that the respondent has not afforded an opportunity of personal hearing.

4. On a perusal of the impugned orders, it is evidently clear that the respondent has not afforded an opportunity of personal hearing, which is mandatory.

5. The learned Senior Counsel appearing on behalf of the petitioner has referred to the decision of the Hon'ble Division Bench of this Court in the case of AC (CT), presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti

Wholesale Limited [reported in (2017) 99 VST 341] and another decision of this Court in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle, Chennai [reported in (2017) 99 VST 343].

6. As it has been held that an opportunity of personal hearing is mandatory, especially when the respondent states that there is no document produced by the petitioner, the respondent could have afforded an opportunity of personal hearing and directed the dealer to produce documents and upon failure to do so, the assessment could have been completed in the manner done by the respondent in the impugned orders. Thus, for the said reason, this Court is inclined to pass appropriate directions, so that the petitioner has an opportunity to place all documents before the respondent.

7. One more reason, which prompted this Court to take such a decision is on account of the fact that the revision of assessment is pursuant to a field audit conducted by the officials of the Enforcement Wing. Therefore, the issuance of revision notices respectively dated 07.2.2018, 07.2.2018, 08.2.2018, 09.2.2018 and 09.2.2018 by the Assessing Officer is on account of the report of the officials of the Enforcement Wing and not on his own volition. Hence, an adequate and effective opportunity is mandatory.

8. Accordingly, the writ petitions are disposed of by directing the petitioner to treat the impugned proceedings as show cause notices, enclose their further and detailed objections along with records in respect of their stand and submit the same to the respondent within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections along with records, the respondent shall fix a specific date for personal hearing, hear the authorized representative of the petitioner and if any further records are required, call for the same and pass a speaking order on merits and in accordance with law. Till then, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Commercial Tax Officer,
Jayamkondam Assessment Circle,
Jayamkondam, Ariyalur District.

+5cc to Mr.M.NALLATHAMBI, Advocate, S.R.No. 53525
+1cc to the Government Pleader, S.R.No.53641

WP.Nos.Nos.20024 to 20028 of 2018
& WMP.Nos.23466 to 23470 of 2018

GP(CO)
TR(29/08/2018)