IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.10418 and 10419 of 2018
& W.M.P.Nos.12385 to 12387 of 2018

M/s.M.K.M. & Sons
Represented by its Partner
Thiru M.K.Ganesh .. Petitioner in both W.Ps'

Versus

The State Tax Officer
(Erstwhile Commercial Tax Officer)
Nolumbur Assessment Circle,
No.176, M.T.H.Road,
Villivakkam,
Chennai - 600 049. .. Respondent in both W.Ps'

Petitions filed under Article 226 of the Constitution of India, seeking for Writ of Certiorari, calling for the records of the respondent in TIN/33931348850/2014-15 and TNGST/1348850/2001-02 urgent notice dated 02.04.2018 and quash the same as arbitrary, illegal and pass such or other orders.

For Petitioner : Mr.C.A.Ashok Kumar
(In both W.Ps')

For Respondent : Mr.M.Hariharan
(In both W.Ps') Addl. Government Pleader

COMMON ORDER

Heard Mr.C.A.Ashok Kumar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondent.

2. The petitioner has filed this writ petition challenging the "urgent notice" issued by the respondent dated 02.04.2018, directing the petitioner to pay arrears of tax of Rs.59,92,391/- (Rupees Fifty Nine Lakhs Ninety Two Thousand Three Hundered and Niney one only) of which Rs.2,45,551/- (Rupees Two Lakhs Forty

Five Thousand Five Hundred and Fifty one only) being tax payable under the provisions of the TNGST Act for the assessment year 2001-2002 and a sum of Rs.57,46,840/- (Rupees Fifty Seven Lakhs Forty Six Thousand Eight Hundred and Forty only) being the tax payable by the petitioner under the provisions of the TNVAT Act for the assessment year 2014-2015. When the case came up for hearing in the forenoon, it was passed over and the learned Additional Government Pleader was directed to get instructions from the respondent.

3. The learned Additional Government Pleader immediately informed the respondent and Mr.R.Koteeswaran, State Tax Officer, Nolambur Assessment Circle, is before this Court along with files. It is seen from the files pertaining to the assessment under the TNVAT Act, though there is an endorsement to show that the notice, proposing to revise the assessment, dated 31.12.2014 was dispatched on 02.01.2015, there is no acknowledgment to show that it has been served on the respondent. Similarly the assessment order for the year 2014-2015 dated 05.05.2015, though shown to have been dispatched on 20.05.2015, there is no acknowledgment. Therefore, this Court is of the view that one more opportunity can be granted to the petitioner to contest the proceedings as it appears that they did not have notice of the proceedings. So far as the assessment under the TNGST Act is concerned, the files were earlier dealt with by the Koimbedu Assessment Circle and on administrative reorganization, the assessment under the TNGST also fell within the jurisdiction of the Nolambur Assessment Circle. Koimbedu Assessment Circle has forwarded the list of names of the dealers, who were due and payable under the provision of the TNGST Act. The respondent, on receiving the information, has issued the impugned notice in the tabular information chart. It is shown that the petitioner has to pay a sum of Rs.2,45,551/- (Rupees Two Lakhs Forty Five Thousand Five Hundred and Fifty one only) and the date of service notice is 04.05.2005. However, since the files are not available with the respondent, the respondent can proceed further in the matter, after he receives the files from the Assistant Commissioner (ST) Koimbedu Assessment Circle.

4. Thus for the above reasons, these writ petitions are allowed and the impugned notices are set aside and the respondent is directed to comply with the following:

(i) The respondent is directed to communicate the copy of the assessment order for the relevant year viz., 2014-2015 under the TNVAT Act to the petitioner and on receipt of the same, the petitioner is directed to submit their objections within 15 days by treating the assessment order as a show cause notice. On receipt of the reply, the respondent shall afford an opportunity of personal hearing and re-do the assessment in accordance with law.

(ii) The order of assessment for the assessment year 2001-2002 under the TNGST Act is concerned, since it was earlier dealt with by Koimbedu Assessment Circle, the respondent is directed to address the Assistant Commissioner (ST), Koimbedu Assessment Circle to immediately transmit the files pertaining to the petitioner. On receipt of the files, the respondent shall forward a copy of the assessment order under the TNGST Act to the petitioner and give the petitioner 15 days time from the date of receipt of the order to submit their objections. After receipt of the objections, the respondent shall conduct a personal hearing and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

vsm

To

The State Tax Officer
(Erstwhile Commercial Tax Officer)
Nolumbur Assessment Circle,
No.176, M.T.H.Road,
Villivakkam,
Chennai - 600 049.

+2cc to Mr.C.A.Ashok Kumar, Advocate SR.No.30863, 30870
+1cc to Special Government Pleader (Taxes) SR.No.31437

W.P.Nos.10418 and 10419 of 2018

RSI(CO)
GN(11/05/2018)