IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.9836 to 9838 of 2018
and W.M.P.Nos.11769 to 11771 of 2018

M/s.Bee Yess Kay Fabs,
Rep. by the Managing Partner,
S.F.No.254/3C1 N/A, Mallappanur X Road,
Nangavalli Main Road, Karuppureddy Post,
Mettur Dam-636 404, Salem District. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST), (FAC),
Omalur, Salem. ... Respondent in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33383248170/2013-14, 2014-15 & 2015-16 for AY 2013-14, 2014-15 & 2015-16 respectively by order dated 29.12.2017 and quash the same as illegal and consequently direct the respondent to provide an opportunity of hearing.

For Petitioner : Mr.S.Rajesh
(in all W.Ps.)

For Respondent : Mr.M.Hariharan,
(in all W.Ps.) Additional Government Pleader

C O M M O N O R D E R

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

2. The petitioner is engaged in the business of fabrication and erection of steel structural for factories and other godowns. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value

Added Tax Act, 2006 (for brevity "the TNVAT Act").

3. In these writ petitions, the petitioner has challenged the assessment orders under the TNVAT Act dated 29.12.2017, for the assessment years 2013-14, 2014-15 and 2015-16. The challenge to the impugned assessment orders is not on merits, but on the ground of violation of principles of natural justice. The respondent issued revision notices dated 02.01.2017.

4. It appears that the respondent afforded an opportunity of personal hearing to the petitioner and sent one more notice on 12.06.2017. Even for the said notice, the petitioner did not respond and ultimately, on 25.12.2017, the petitioner sent representations to the respondent stating that the Central Excise Authority had visited the premises of the petitioner and have seized the purchase records, sales invoices, account books, etc., under 'Panchanama' and therefore, the petitioner is unable to produce the records before the respondent.

5. Further, with regard to mismatch issue, the petitioner requested for details such as invoice number, date, turnover figures, etc. The petitioner did not appear in person before the respondent, but sent a reply by registered post with acknowledgment dated 25.12.2017. This reply has been received in the office of the respondent dated 27.12.2017, as could be seen from the postal acknowledgment, which has been signed by the Superintendent in the office of the respondent. On 29.12.2017, the impugned order has been passed. Though the petitioner may be right in contending that the replies given by the petitioner dated 25.12.2017, was received two days before the impugned orders were passed, it is not clear as to whether the replies given by the petitioner were placed before the respondent at the time when he passed the impugned assessment orders. The petitioner has to be fully blamed for the present situation. This is so because, the petitioner should have appeared before the respondent and explained the entire case, because the respondent had given nearly one year time to the petitioner. Therefore, the intention of the petitioner appears is to drag on the proceedings. However, in my considered view, since the records are stated to have been seized by the Central Excise Authority, this Court is of the view that one more opportunity can be granted to the petitioner to go before the assessing officer.

6. Accordingly, these writ petitions are disposed of by directing the petitioner to treat the impugned proceedings as show cause notices and submit their reply within a period of fifteen days' from the date of receipt of a copy of this order by personally appearing before the respondent. The petitioner should produce all records in their possession and if they require any records from the respondent, they should give a written request to the respondent. On considering the same, the respondent shall furnish the requisite details and give further time of seven days' to submit further reply. On receipt of the reply, personal hearing shall be conducted and the assessment shall be redone in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

abr
To

The Assistant Commissioner (ST), (FAC),
Omalur, Salem.

+3 Ccs to Mr.S. Sivanandam, Advocate sr 29784.
+1 CC to Spl. Govt. Pleader sr 30076.

W.P.Nos.9836 to 9838 of 2018

SP(08/05/2018)