In the High Court of Judicature at Madras

Dated : 06.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.13513 to 13515 of 2018
& WMP.Nos.15921 to 15923 of 2018

Tvl.AMR Sumangalee Jewellers,
rep.by its Partner P.Arumugam ...Petitioner

Vs

The Assistant Commissioner (CT),
Arisipalayam Circle, Salem. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in TIN : 33482846147/2013-14, TIN : 33482846147/2014-15 and TIN : 33482846147/2015-16, all dated 28.3.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. In view of the glaring errors, which are apparent on the face of the impugned orders, this Court is inclined to dispose of the writ petitions even at the admission stage, for which course, the learned counsel on either side are agreeable.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, is before this Court challenging the assessment orders under the provisions of the said Act for the years 2013-14, 2014-15 and 2015-16, all dated 28.3.2018.

3. The petitioner is not before this Court challenging the impugned assessment orders on merits, but on the ground that they are in total violation of the principles of natural justice and are vitiated on account of non consideration of the objections filed by the petitioner. As could be seen from the records, the petitioner's case has been dealt with by three different Assessing Officers. First of such Officer issued the pre-assessment notice dated 27.7.2015 for the year 2013-14, for which, the petitioner submitted their reply dated 13.8.2015 along with annexures running to nearly 28 pages.

4. It appears that the Officer, who issued the pre-assessment notice dated 27.7.2015, was transferred and a new Officer took charge, who issued the pre-assessment notices dated 23.12.2016 for the relevant assessment years. This Court finds that in the pre-assessment notices dated 23.12.2016, there is no reference to the earlier notice dated 27.7.2015 nor the petitioner's reply dated 13.8.2015. However, the petitioner submitted their reply dated 28.12.2016 along with annexures, which run to nearly 100 pages. However, no action was initiated pursuant to such a reply and the matter lied over. After a year i.e. On 22.12.2017, the present Officer issued the pre-assessment notices dated 22.12.2017. Even in the pre-assessment notices dated 22.12.2017, there is no reference to the earlier two pre-assessment notices nor the replies submitted by the petitioner.

5. On receipt of the pre-assessment notices dated 22.12.2017, the petitioner submitted their reply dated 22.1.2018 requesting the Officer to refer to the earlier replies given on 13.8.2015 and 28.12.2016. However, the respondent, without taking note of the objections, passed the impugned orders of assessment. On a reading of the penultimate paragraph of the impugned orders, it is seen that it contains certain reasons. This Court finds that the present Officer only recorded his personal opinion and did not analyze the actual situation as pleaded by the petitioner. The Assessing Officer is required to examine as to whether the replies/objections submitted by the petitioner to the pre-assessment notices merit consideration and there is no room for recording the personal opinion. Therefore, this Court is of the considered view that the assessments should be redone in a proper manner by considering the petitioner's objections and affording an opportunity of personal hearing.

6. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for a fresh consideration. The respondent shall consider the petitioner's objections dated 13.8.2015 and 28.12.2016, afford an opportunity of personal hearing, direct the petitioner to produce any records, if necessary and redo the assessments in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Arisipalayam Circle, Salem.

+1cc Mr.R.Senniappan, Advocate Sr.35393
+1cc to the Government Pleader Sr.35533

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srg 12/06/2018