In the High Court of Judicature at Madras

Dated : 08.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.13830 to 13833 of 2018
& WMP.Nos.16325 to 16328 of 2018

Eaton Power Quality Pvt. Ltd.,
rep.by its DGM Finance
Mr.A.Devaraj ...Petitioner

Vs

The Commercial Tax Officer,
Vanagaram Assessment Circle,
No.176-B, MTH Road,
Villivakkam, Chennai-49. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in the proceedings of the respondent respectively in Assessment Orders CST/1308920/2015-16 dated 19.4.2018, CST/1308920/2014-15 dated 18.4.2018, TIN/ 33946265047/2014-15 dated 18.4.2018 and TIN/33946265047/2015-16 dated 19.4.2018 issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabhakar
For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

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 and the Central Sales Tax Act, 1956, has filed these writ petitions challenging the assessment orders passed both under the Central Enactment as well as under the State Enactment.

3. The impugned orders are a result of an inspection conducted in the place of business of the petitioner on 05.5.2017 by the Commercial Tax Officer, Group VII/Enforcement (East) - the Enforcement Officer. On completion of inspection, a

statement was prepared purporting to be a sworn statement to be signed by the petitioner.

4. It is stated by the learned counsel for the petitioner that the authorized representative of the petitioner refused to sign the statement, as there were several factual discrepancies, which were mentioned by the Enforcement Officer.

5. On a perusal of the copy of the swron statement, this Court finds that there is an endorsement on the bottom stating 'refused to sign'. Thereafter, the petitioner, by email dated 05.5.2017, enclosed their reply along with supportive documents to audit slips 2 to 9 and the intimation dated 27.4.2017. A copy of the email has been filed at page 13 of the typed set of papers, which shows that there were eight attachments to the email.

6. One of the stands taken in the said reply was that the petitioner is not dealing with voltage stabilizers, but they are dealing with UPS. Subsequently, the petitioner sent another email to the Enforcement Officer attaching their reply dated 15.5.2017. In the email dated 15.5.2017, the petitioner specifically requested to revise the sworn statement by considering the reply along with supportive documents sent vide email dated 05.5.2017. However, the Enforcement Officer did not send any further communication to the petitioner in response to the petitioner's emails dated 05.5.2017 and 15.5.017.

7. After about four months, the respondent - Assessing Officer issued the notices dated 05.9.2017 proposing to reject the monthly returns filed by the petitioner as incorrect and incomplete and assess them to tax under various heads. It is the admitted case that the petitioner did not respond to the show cause notices issued nor availed the opportunity of personal hearing granted to them. Now, the petitioner is before this Court challenging the assessment orders, which confirmed the proposals in the revision notices, as the petitioner had not submitted their objections nor availed the opportunity of personal hearing granted to them.

8. The learned Government Advocate is perfectly right in her submission that the manner, in which, the respondent completed the assessments cannot be faulted, as the petitioner failed to avail the opportunity granted to them.

9. This Court, under normal circumstances, would have accepted the submission made on the side of the respondent and refused to entertain the writ petitions. However, in the instant cases, this Court proposes to depart from the normal course on account of the factual circumstances, which are evident from the records placed before this Court.

10. Admittedly, the revision notices issued by the respondent dated 05.9.2017 is sequel to the inspection conducted by the Enforcement Officer. The observations contained in the impugned orders are verbatim reproduction of the statement, which was prepared by the Enforcement Officer and refused to be signed by the authorized representative of the petitioner. If the Enforcement Officer directs the Assessing Officer to initiate action based on the findings, which they recorded during inspection, then in all fairness, the Assessing Officer should have forwarded the replies given by the petitioner vide emails dated 05.5.2017 and 15.5.2017 along with attachments. This is more so in the instant cases because the petitioner refused to sign the statement, which has been recorded by the Enforcement Officer in the statement itself, which is found at page 12 of the typed set of papers.

11. Thus, the respondent should have been put on notice by the Enforcement Officer about the stand taken by the petitioner earlier in the sworn statement, which was prepared by the Enforcement Officer, failing which, the action should be termed to be unilateral. The replies given by the petitioner have not been taken note of though it might have been addressed to the Enforcement Officer. Therefore, fairness demands that the Enforcement Officer places all the papers for consideration of the Assessing Officer. Had such procedure been adopted, there are probabilities that the respondent - Assessing Officer might have even sent a reply deviating from the proposal before issuing such revision notices.

12. To that extent, this Court is satisfied that there has been a violation of the principles of natural justice despite the fact that the petitioner did not submit their objections to the revision notices. Hence, this Court is satisfied that the petitioner should be given another opportunity to contest the proceedings before the Assessing Officer. It is needles to point out that the Assessing Officer shall take an independent view de hors the observations made by the Enforcement Officer, failing which, the Assessing Officer would be abdicating his statutory duties.

13. For the above reasons, the writ petitions are disposed of by directing the petitioner to treat the impugned assessment orders as show cause notices and submit their objections along with all enclosures and annexures, within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall fix a date for personal hearing, hear the authorized representative of the petitioner and redo the assessments in accordance with law. As pointed out earlier, the respondent shall not be guided by the observations made by the Enforcement Officer and shall take an independent decision in the matter. This is more so in the instant cases because the sworn statement prepared by the Enforcement Officer

has been refused to be signed by the authorized representative of the petitioner and vide their emails dated 05.5.2017 and 15.5.2017, the petitioner sought for revising what has been written by the Enforcement Officer. Till fresh orders are passed, 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

To
The Commercial Tax Officer,
Vanagaram Assessment Circle, No.176-B, MTH Road,
Villivakkam, Chennai-49.

+1 cc to M/s.Joseph Prabakar Advocate sr 35725
+2 ccs to the Special Govt pleader(Taxes) sr 36329,36330

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aa14/06/2018