IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19720, 19721 and 19722 of 2018
and
W.M.P.Nos.23166, 23167 and 23168 of 2018

M/s.Shree Venkateshwara Enterprises,
represented by its Proprietor,
Mr.R.Vijayakumar
No.108/3, Sedarapet Main Road,
Sedarapet, Puducherry,
Puducherry - 605 111. ... Petitioner in all petitions

Vs.

The Commercial Tax Officer - I,
Commercial Taxes Department,
100 Feet Road, Pudupalayam,
Puducherry - 5. ...Respondent in all petitions

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the file of the respondent in TIN/34020016942/2014-15 dated 13.04.2018, TIN/34020016942/2015-16 dated 04.05.2018 and TIN/34020016942/2016-17 dated 08.06.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar
[in all petitions]

For Respondent : Mr.J.Kumaran,
[in all petitions] Government Advocate

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C O M M O N O R D E R

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.J.Kumaran, learned Government Advocate, for the respondent.

2. Petitioner has filed these Writ Petitions challenging the assessment orders under the provisions of Puducherry Value Added Tax Act (PVAT Act). The challenge to the assessment orders for the Assessment Years 2014-15 and 2015-16 is on the ground that no pre-assessment notices have been issued. The assessment order for the Assessment Year 2016-17 has been challenged on the ground that though the impugned order states that a pre-assessment notice has been issued, the petitioner has not received the same. Apart from that the order states that as if reply has been given by the petitioner on 31.05.2018 is also incorrect.

3. So far as the Assessment Years 2014-15 and 2015-16 are concerned, learned Government Advocate, on instructions from the officer, who is present in Court along with the original files, states that no pre-assessment notices have been issued. So far as the Assessment Year 2016-17 is concerned, learned Government Advocate, has produced proof to show that the proprietor of the petitioner, viz., R.Vijaya Kumar has received the notice dated 31.05.2018 on 31.05.2018. If that is so, the original file should contain the reply of the dealer, which is stated to have been given on the very same date. The photostat copies produced before this Court did not contain any reply dated 31.05.2018. Therefore, to the partial extent, the petitioner is right in their submission that they have not given any reply. Twelve cheques have been collected from the petitioner on the date of inspection i.e., 26.04.2018 and six have been encashed. The official, who is present in Court, states that no post-dated cheques are with the respondent and all cheques have been given by the petitioner voluntarily as the petitioner requested payment of tax in instalment vide his representation dated 02.05.2018. Further, learned Government Advocate would submit that at no point of time, the petitioner disputes the liability, but rather admits the same for which the representation is referred to.

4. In my considered view, there cannot be any estoppel against the petitioner in the matter of levy of tax. The requirement is that the petitioner should have adequate opportunity to put for their defence and cheques collected without authority of law is illegal. Thus, for the above reasons, even if payments have been recovered, the same shall abide by the fresh orders, which have to be passed for which appropriate directions will be issued by this Court.

Hence, for the above reasons, these Writ Petitions are disposed of by directing the petitioner to treat the assessment orders as show cause notices and submit objections within 15 days from the date of receipt of a copy of this order. On receipt of the objection, the respondent shall afford an opportunity of personal hearing and pass fresh orders for three Assessment Years. It is open to the petitioner to raise all contentions before the Assessing Officer, who shall take an independent decision in the matter. It is stated that the respondent is not only the Assessing Officer but also the officer, who conducted the inspection. Though the respondent may hold two different posts, the nature of duties and responsibilities exercised as Assessing Officer is different from that of an inspecting officer as the Assessing Officer is the quasi-judicial officer, who has to independently decide the matter based on the objections/reply filed by the dealer and the documents they produce. Therefore, with an open mind, the respondent should take a decision. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gm

To
The Commercial Tax Officer - I,
Commercial Taxes Department,
100 Feet Road, Pudupalayam,
Puducherry - 5.

+2 CC TO MR.D.VIJAYAKUMAR Advocate SR.NO. 53168

+1 CC TO THE GOVERNMENT PLEADERS SR.NO. 53732

W.P.Nos.19720, 19721 and 19722 of 2018

VD(CO)
ASK(03/09/2018)