IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.02.2019

CORAM
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.3364 & 3367 of 2019
and
W.M.P.Nos.3645 & 3648 of 2019

SLR Agency
Represented by its Proprietor
Mrs V.M.Subashree ....Petitioner in both WPs

--Vs--

The Commercial Tax Officer
Redesignated as State Tax Officer
Ayyappanthangal Assessment Circle
No.-5/44, Thiruvalluvar Salai,
Ramapuram, Chennai-89. ...Respondent in both WPs

PRAYER in both WPs: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records in the impugned orders TIN: 33501391718/2014-15 & 2013-14 dated 24.01.2019, 27.11.2018 on the file of the respondent to quash the same and consequently direct the respondent to re-do the assessment based on the revised Income Tax Returns filed after giving an opportunity of being heard.

For Petitioner: Mr.V.Veeraraghavan in both WPs

For Respondent: M/s.G.Dhana Madri
Government Advocate (Taxes) in both Wps

C O M M O N O R D E R

The petitioner is a dealer in supply of Industrial and Domestic Gas. Returns of Turnover had been filed by the petitioner for the periods 2013-14 and 2014-15. The business premises of the petitioner was subject to VAT Audit on 22.06.2017, during the course of which various defects and discrepancies were alleged to have been noticed by the authorities. Accordingly, notice was issued for revision of assessments concluding in the passing of the orders impugned in these Writ Petitions. Objections dated 07.08.2018 and 20.10.2018 were filed by the petitioner. The assessments were revised vide impugned orders dated 27.11.2011 & 24.01.2019 respectively. Several adjustments have been made to the returns filed including suppression of purchase turnover and excess availment of input tax credit.

2. The short point on which the assessment order is assailed before me is that no personal hearing as required in terms of Section 27 of the Tamil Nadu Value Added Tax 2006 (in short the 'Act') has been afforded by the Assessing Officer. It is also stated that suppression arrived at is erroneous insofar as the same was based on incorrect Income tax Returns filed earlier that have been revised on 28.01.2019. A petition for rectification was filed in terms of section 84 of the Act that was rejected on the same day.

3. The impugned orders of revision of assessments have been passed in terms of Section 27 of the Act that states as follows:

> ...27. Assessment of escaped turnover and wrong availment of input tax credit:-
>
> ... Provided that no order shall be passed under sub-Section(1) and (2) without giving the dealer a reasonable opportunity to show cause against such order...

4. The Special Commissioner and Commissioner of Commercial Taxes, vide Circular No.7/14 dated 03.02.2014 has specifically directed all Assessing Officers to afford a reasonable opportunity as well as personal hearing prior to completion of proceedings under section 27 of the Act. The requirement of fair hearing as well as personal hearing of the assessee/authorised representative has always been held to be an indispensable part of the procedure adopted for assessment. This position has been settled in the case of SRC projects Private Limited Vs. Commissioner of Commercial Taxes, Chennai and Another [(2008) 9 TMI 914].

5. Learned counsel for the respondent fairly submits that an opportunity of personal hearing has not been granted.

6. In the light of the above, the impugned Assessment Orders dated 24.01.2019 & 27.01.2019 are set aside and the Assessing Officer is directed to complete the revision of assessments denovo. The petitioner will appear before the Assessing Officer on 28.02.2019 at the first instance. The Assessing Officer shall complete the assessment within a period of six (6) weeks from the date of conclusion of the personal hearing, in any event on or before 30.04.2019. It is made clear that no opinion has been expressed on the merits of the matter and the Assessing Authority shall proceed with the matter independently and in accordance with law.

7. With this direction the writ petitions stand disposed of. Consequently, connected miscellaneous petitions are also closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Redesignated as State Tax Officer
Ayyappanthangal Assessment Circle
No.-5/44, Thiruvalluvar Salai,
Ramapuram, Chennai-89.

+2ccs to Mr.K.Senguttuvan, Advocate, S.R.No.11783 & 11784
+1cc to the Government Pleader, S.R.No.11504

W.P.No.3364 & 3367 of 2019
& W.P.Nos.3645 & 3648 of 2019

rrs 19/02/2019