IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 9577 to 9579 of 2012
and
M.P. Nos. 1,1, 1 of 2012

M/s. K & K Systems,
Represented by its Managing Partner,
Shri V. Kothandaraman,
No.21/5, R.R. Flats,
Vedhachalam Nagar, 1st Street,
Chennai - 600 024. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT),
Saligramam Assessment Circle,
No. 20, 88th Street, Kamarajar Salai,
Ashok Nagar, Chennai - 600 083. ... Respondent in all W.Ps

Prayer in W.P. No. 9577 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the for the records in TIN: 33441420269/2007-2008 dated 16.03.2012 relating to Assessment Year 2007-2008 on the file of the Respondent herein and quash the same.
Prayer in W.P. No. 9578 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the for the records in TIN: 33441420269/2008-2009 dated 16.03.2012 relating to Assessment Year 2008-2009 on the file of the Respondent herein and quash the same.
Prayer in W.P. No. 9579 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the for the records in TIN: 33441420269/2009-2010 dated 16.03.2012 relating to Assessment Year 2009-2010 on the file of the Respondent herein and quash the same.



For Petitioner (in all W.Ps) : Mr. Joseph Prabakar

For Respondent (in all W.Ps) : Mr. Mohammed Shaffiz
Special Government Pleader (Taxes)

COMMON ORDER

The present writ petitions have been challenged the order of the Assessment Years 2007-2008, 2008-2009 and 2009-2010. In these writ petitions, the Petitioner has challenged the order passed by the Respondents as Assistant Commissioner of Commercial Taxes, Saligramam on the ground that neither the notice was issued nor hearing was granted to the Petitioner and that notice of arrears said to have been served only on the representatives (Sales Tax practitioners) for the Assessment Year 2005-2006 alone and therefore service of notice even it has been served on him was not in compliance of the requirements of the Section 21 of the Tamil Nadu Value Added Tax Act, 2006 which contemplates reasonable opportunity ought to have been provided to show cause. The learned counsel for the Petitioner submits that the said provision would also incumbent upon right of being heard.

2. Per contra, the learned counsel for the Respondent submits that the issue was considered in another writ petition in W.P.Nos.6868 to 6874 of 2017, wherein a co-ordinate bench of this Court, considered that in all cases, hearing should be granted. The learned counsel for the Petitioner submits that the issue is squarely covered by the decision of the Division Bench of this Court rendered on 29.01.2018 in W.A. No. 173 of 2018 wherein, the Hon'ble Division Bench of this Court referred to a circular dated 03.02.2014 and held as under in paragraphs 15 and 16:

> "15. (29). We, therefore, direct that the Appellant/Petitioner must appear before the Second Respondent in these appeals, who passed the Impugned Order, within a period of seven days from the date of getting a certified copy of this Judgment and thereupon, the Second Respondent will fix the personal date of hearing in which the Appellant must appear and the hearing should be concluded within two weeks thereafter. After such hearing is concluded, the Second Respondent is at liberty to pass orders in accordance with law after considering the Petitioner's case, which will be presented in the course of such hearing.
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> "16. In the light of the above circular, and the decision in SRC Projects Private Limited Vs Commissioner of Commercial Taxes, Chennai and another, 2010 33 VST 333 (Mad), impugned order is set aside. Matter is remitted back to the Assessing Officer, to consider afresh, provide opportunity to the Appellant, ans pass order in accordance with law."



3. Following the above decision of the Hon'ble Division Bench of this Court, the impugned order is set aside and the Petitioner is given liberty and file a reply to the show cause notice. Accordingly, the matter is remitted back to the Respondent for fresh consideration, who shall complete the proceedings within a period of three months from the date of communication of this order, after affording an opportunity of hearing to the Petitioner. The Respondent is directed to furnish a fresh copy of the hearing notice within a period of 15 days from the date of receipt of a copy of this order.

4. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Saligramam Assessment Circle,
No. 20, 88th Street, Kamarajar Salai,
Ashok Nagar, Chennai - 600 083.

+1cc to Mr.Joseph prabakar , Advocate SR.No. 101097

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A.SK(11/12/2019)