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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.4318, 4319 & 4320 of 2017
and
W.M.P(MD)Nos.3469, 3470 & 3471 of 2017

M/s.Abarna Battery Centre,
Rep. by its Propretrix V.Shakiladevi,
No.10-B/45B, Pidarykulam Road,
Kumbakonam -1. ... Petitioner in all W.Ps'

Vs.

The Assistant Commissioner (CT),
Kumbakonam Assessment Circle – I,
Commercial Tax Building,
Kumbakonam. ... Respondent in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Tin Nos.33953941843/ 2013-14, 2014-15 and 2015-16 dated 18.01.2017, 23.01.2017 and 27.01.2017 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after furnishing records as requested by the petitioner vide letter of objections dated 26.12.2016 including opportunity of being heard to the petitioner.

For Petitioner : Mr.S.Karunakar
(in all W.Ps')

For Respondents : Mrs.J.Padmavathy Devi,
(in all W.Ps Special Government Pleader.

COMMON ORDER

The petitioner assails orders of assessment for the periods 2013-14, 2014-15 and 2015-16 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2.The petitioner is a dealer in batteries and an assessee on the file of the respondent. The Assessing Authority issued a notice

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dated 02.12.2016 pursuant to a surprise inspection conducted by the Enforcement Wing of the Commercial Tax Department on various dates in December, 2015, culminating on 09.01.2016. The notice refers to the inspection and states that upon verification of the monthly returns, purchase bills and profit and loss account and a comparison of the same with the information relating to sales details as per the annexures of the selling dealers in the Management Information System report (In short 'MIS report'), certain purchase omissions were allegedly found. The Assessing Authority, thus, proposed to bring to tax the entire allegedly undisclosed purchases as per MIS report along with freight charges, gross profit at 2%, sales omission and penalty under Section 27(3)(c) of the Act.

3.The petitioner vide reply dated 26.12.2016, responded to the proposals for assessment specifically seeking details of the selling dealers as per MIS report in order that it may rebut the same.

4.Though the assessing authority notes the objections of the dealer in the reference to the impugned orders of assessment, admittedly, a copy of the MIS Report has not been furnished. I am of the view that in the absence of the same, the petitioner will not be sufficiently equipped to respond to the pre-assessment notice. Further, personal hearing has also not been granted in this matter.

5.The counter filed by the respondent does not deny the positions either that the MIS report has not been furnished or that personal opportunity of hearing has not been afforded. In the aforesaid circumstances, the impugned orders are set aside.

6.The Assessing Authority is directed to furnish a copy of the MIS report along with details of the annexures of selling dealers to enable the petitioner to file a reply within a period of eight weeks from today. Upon receipt thereof, the petitioner shall file its response to the same. After affording an opportunity of personal hearing, the Assessing Authority shall complete the assessment and orders shall be passed de novo and in accordance with law.

7.These Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Kumbakonam Assessment Circle - I,
Commercial Tax Building,
Kumbakonam.

+2 CC to M/s.S.KARUNAKAR, Advocate (SR NOS-80965 & 80964

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