IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.20500 to 20503 of 2015
and
M.P.Nos.1 of 2015

Ram Priya Hardwares
Rep by its Proprietor
No.16 Sangam Road
Chromepet, Chennai 44 ... Petitioner in all the WPs

Vs

The Assistant Commissioner(CT)
Pallavaram Assessment Circle
Chennai ... Respondent in all the WPs

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the orders dt 9.6.2015 in TIN 33510885906/11-12 to 14-15 respectively passed by the respondent and quash the same

For Petitioner : Mr.J.Adithya Reddy

For Respondent : Mr.ANR.Jayapratap,
Government Advocate(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.ANR.Jayapratap, learned Government Advocate (Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions have been filed challenging the orders dated 9.6.2015 passed by the respondent in TIN 33510885906/11-12 to 14-15 respectively.

3. The petitioner, being the dealers in hardware and building materials registered themselves as a dealer on the files of the Assistant Commissioner (CT), Pallavaram Assessment Circle, Chennai having TIN No.33510885906. They have filed annual returns under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as TNVAT Act). It is the case of the petitioner that the respondent claims to have issued notices dated 20.05.2015 for the assessment years 2011-12 to 2014-15, proposing to levy tax by estimating the sales turnover by taking the entire purchase turnover and adding 20% as gross profit apart from levying penalty. Since the petitioner was suffering from serious heart ailment and was admitted in the hospital during the relevant period, he could not reply to the notices. Therefore, the respondent confirmed the proposal and passed the assessment orders. Aggrieved over the same, the petitioner is before this Court.

4.1 Learned counsel for the petitioner submitted that according to the respondent, on verification of the sales details, the purchase turnover for the respective assessment years were taken and since it exceeded the turnover limit, by referring to Section 3(1)(b) of the TNVAT Act, notices were issued proposing to levy tax by estimating the sales turnover, taking into account the entire purchase turnover by adding 20% as gross profit and since no reply was filed, the proposal was confirmed.

4.2 According to the learned counsel for the petitioner due to the petitioner's ill health, the petitioner was not able to file proper objections for the relevant periods, which lead confirmation of proposals on the basis of the notices issued. Learned counsel for the petitioner would further submit that according to the respondent, the impugned orders have been passed on the basis that the petitioner's purchase turnover is more than Rs.10 lakhs and therefore, the petitioner ought to have filed monthly returns and not annual returns in terms of Section 3(1)(b) of the TNVAT Act read with Rule 7(7) of the TNVAT Rules. However, according to him, the petitioner's turnover has not exceeded Rs.10 lakhs.

4.3 That apart, according to the learned counsel for the petitioner, while making the Best Judgment Assessment, the respondent without any enquiry cannot indulge in guess work as held by the Hon'ble Supreme Court in the case of State of Madraas vs. S.G.Jayaraja Nadar & Sons reported in 28 STC 700. Further, the learned counsel for the petitioner would submit that without providing adequate opportunity, for production of the accounts books which are very much available along with other records, there cannot be any ground for making the best judgment assessment. Treating the impugned order as guess work, the learned counsel for the petitioner has sought for setting aside the same with an opportunity to produce accounts and file proper objections.

5. According to the learned Government Advocate (Taxes), the notices dated 20.05.2015 were served on the petitioner on 22.05.2015 and since no reply was filed, the proposal was confirmed. Hence, the impugned orders are to be sustained.

6. Admittedly, the petitioner did not file any objection. At the same time, the respondent, simply confirmed the proposal, without any verification of account books and the returns which cannot be totally ignored leading to guess work. Hence, in order to give one more opportunity to the petitiioner, the impugned orders are set aside and the matters are remitted back to the respondent for passing fresh orders. The petitioner is directed to file proper objections, within a period of two weeks from the date of receipt of a copy of this order along with documentary evidences and on such filing, the respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Pallavaram Assessment Circle
Chennai

+1cc to M/s.Adhithya Reddy, Advocate, S.R.No.41687
+1cc to the Special Government Pleader(Taxes), S.R.No.41912

W.P.Nos.20500 to 20503 of 2015

PPA(CO)
CA(25/08/2015)