IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3574 to 3578 of 2015
and
M.P.Nos.1 to 1 of 2015

Rifah Shoes Pvt. Ltd.,
Rep. by its Director Mr.Junaid Ahmed,
No.221, P.H.Road,
Kilpauk, Chennai-10. ...Petitioner in all WPs.

Vs

The Assistant Commissioner (CT)
Kilpauk Assessment Circle
Taylors Road,
Chennai-10. ...Respondent in all WPs.

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in proceedings in TIN 33851122302/2011-12, 2010-11, 2009-10, 2013-14 and 2012-13, dated 31.12.14 and quash the same being illegal invalid and violated the principles of natural justice and also law laid down by this Court.

For Petitioner : Mr. D.Vijayakumar

For Respondent : Mr.V.Haribabu, AGP(T)

COMMON ORDER

The petitioner Company has come forward with these writ petitions, challenging the orders of the respondent dated 31.12.2014.

2. Since the parties and the issue involved in these writ petitions are one and the same, all the writ petitions are taken up together and disposed of by this common order at the admission stage itself.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent.

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3. The learned counsel for the petitioner submitted that the petitioner Company is the manufacturer of footwear and it is an assessee to the respondent department. The petitioner reported total export sales turnover of Rs.29,71,01,889/- for the year 2011-12 Rs.29,16,40,811/- for the year 2010-11, Rs.34,07,79,476/- for the year 2009-10 Rs.14,37,83,934/- (upto Nov.2013) for the year 2013-14 and Rs.29,02,85,247/- for the year 2012-13 under TNVAT Act. The respondent has also accepted the export sales turnover while claiming ITC in Form 'W' in the above said assessment years.

4. Learned counsel for the petitioner further submitted that without affording an opportunity to the petitioner, the respondent passed assessment orders for the respective years. Pursuant to the Assessment Orders, the respondent issued notices dated 28.11.2014 and 16.12.2014 respectively for the assessment years 2007-08 to 2013-14, stating that the petitioner may avail an opportunity of personal hearing and appeal before the respondent for personal hearing on 24.12.2014 at 11.00 a.m.

5. It is further submitted by the learned counsel for the petitioner that respondent had issued the said notices based on an audit inspection conducted by the department on 21.11.2013 and 20.01.2014 respectively. The respondent fixed the personal hearing on 24.12.2014 for all the seven assessment years and the petitioner represented before the respondent on the said date. On the date of personal hearing, the respondent stated that the turnover reported in Annexure I statement and the Annexure II in respect of seller statement had a difference and the monthly returns turnover and in the balance sheet, purchase sales turnover also have a difference and the respondent wants explanation for the said differences, for which, the petitioner sought one week time to find the enforcement wing officers report. However, the respondent refused to grant time and directed the petitioner to produce documents for the said differences.

6. Learned counsel further submitted that in spite of petitioner's appearance on 26.12.2014 before the respondent and also production of the documentary evidence for the year 2008-09, 2012-13 and 2013-14, the respondent has passed the impugned orders.

7. Learned counsel for the respondent submitted that only after affording an opportunity of personal hearing to the petitioner the impugned orders were passed and only in order to avoid making pre-deposit, the writ petitioner has approached to this Court. The petitioner will have to deposit a minimum 25% of the amount demanded at the time of preferring an appeal and depending upon further order of the Appellate Authority, he may have to deposit further amount. If the contention of the petitioner is accepted, the Department will put to revenue loss.

8. Heard both sides.

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9. Learned counsel for the petitioner submitted that there is no fault on the part of the petitioner and if an opportunity is given to them, they would be able to convince the authority.

10. The learned counsel for the petitioner further submitted that the petitioner has also agreed to pay 10% of the amount as determined in the impugned orders and if three weeks' time is given, they would co-operate to enable the assessing officer to complete the proceedings afresh.

11. The Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as 2006 Act) enables the petitioner to prefer an appeal within 30 days from the date of receipt of the order of the Assessing Officer. The impugned orders are dated 31.12.2014. Even though the learned counsel for the respondent has stated that the writ petition has been filed after the period of limitation prescribed under 2006 Act, the appellate authority is empowered to condone the delay of 30 days after the expiry of the original 30 days and it is for the appellate authority to decide on merits to condone the delay beyond the original period of 30 days and thereafter hear the appeal.

12. Taking note of the facts and circumstances of the case, which being an exceptional one, I direct the respondent to accept 10% of the amount as determined in each of the impugned orders, which the petitioner has agreed to pay the same, which can be adjusted from the refund and give one more opportunity to the petitioner to put forth their objections and thereafter to pass appropriate orders on merits and in accordance with law.

13. The petitioner is directed to appear on 19.03.2015 before the authority, on which date, he is entitled to make his verbal and written submissions, if any. In case the petitioner fails to avail this opportunity on 19.03.2015, the authority is empowered to pass orders afresh on merits and in accordance with law based on the available records. In case an adverse order is passed on the failure of the petitioner to avail the opportunity, the petitioner undertakes that they will approach the appellate authority, challenging that order by complying with pre-deposit and shall not seek the indulgence of this Court on this score. The said submission of the learned counsel for the petitioner is recorded.

14. The writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

12.2.2015

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These matters are having been posted for Being Mentioned on Tuesday, the 17th day of March 2015 and upon perusing the order of this Court dt.12.2.15 in the presence of Mr.D.Vijayakumar, Advocate for the petitioner and of Mr.V.haribabu, AGP(T) on behalf of the respondent, the court made the following order:

These writ petitions are listed today under the caption "for being mentioned" at the instance of the petitioners.

2. By order dated 12.02.2015, this Court, while setting aside the impugned order dated 31.12.2014 of the respondent, directed the petitioner appear before the respondents on 19.03.2015 to make verbal and written submissions. It is now stated by the learned counsel for the petitioners that in para No.12 of the order, a direction was issued to the respondent to accept 10% of the amount, however, it was not specifically stated that the petitioner has to pay the 10% of the tax amount. It is also pointed out that even though the impugned order was set aside by this Court by the order dated 12.02.2015, it was not duly incorporated in the order dated 12.02.2015. Therefore, the learned counsel for the petitioner seeks for modification of Para Nos. 12 and 13 of the order dated 12.02.2015 to that effect.

On the above submission of the learned counsel for the petitioners, I heard the learned Additional Government Pleader appearing for the respondent and perused the order dated 12.02.2015 passed in WP Nos. 3574 to 3578 of 2015.

Having regard to the submissions of the counsel for the petitioner, I am inclined to modify para Nos. 12, 13 and 14 of the order dated 12.02.2015. Accordingly, the order dated 12.02.2015 is modified by substituting para Nos. 12, 13 and 14 with the following paragraphs:-

> "12. Taking note of the facts and circumstances of the case, which is being an exceptional one, I direct the respondent to accept 10% of the tax amount as determined in each of the impugned orders, which the petitioner has agreed to pay the same, which can be adjusted from the refund and give one more opportunity to the petitioner to put forth their objections and thereafter to pass appropriate orders on merits and in accordance with law.
>
> 13. Accordingly, the impugned orders are set aside. No costs. The petitioner is directed to appear before the respondent on 20.04.2015, on which date, they are entitled to make their verbal and written submissions, if any. In case, the petitioner fails to avail this opportunity on 20.04.2015, the respondent is empowered to pass orders afresh on merits and in accordance with law based on the available records. In

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case an adverse order is passed on the failure of the petitioner to avail the opportunity, the learned counsel for the petitioner undertakes that the petitioner will approach the appellate authority, challenging that order by complying with pre-deposit and shall not seek the indulgence of this Court on this score. The said submission of the learned counsel for the petitioner is recorded. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Kilpauk Assessment Circle
Taylors Road,
Chennai-10.

1 CC to Mr. D.Vijayakumar, Advocate SR.No. 14969

1 CC to the Government Pleader, SR.No.15066

W.P.Nos.3574 to 3578 of 2015
And
M.P.Nos.1 to 1 of 2015

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