IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.6151 to 6156 of 2015
and M.P.Nos.1 to 1 of 2015

Sambandam Siva Taxtiles (P) Ltd. [Petitioner in Repd.
by its Director S.Devarajan W.P.No.6151, 6154/15]
Kattu Veppilaipatti Seshanchavadi Post
Salem.

Sambandam Spinning Mills Ltd. [Petitioner in
Repd. by its Managing Director W.P.Nos.6152, 6153,
S.Devarajan 6155 and 6156/15]
Kamaraj Nagar Colony Salem-14.

Vs

The Assistant Commissioner(CT)
Salem Rural Circle Salem. [Respondent]

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the Respondent herein in his TIN 33182701394/2008-09, TIN 33502700151/2009-10, 2010-11, TIN 33182701394/2011-12, TIN 33502700151/2012-13 and 2011-12 respectively dated 28.11.2014 and quash the same.

For Petitioners : Mr.N.Inbarajan
For Respondent : Mr.Cibi Vishnu, AGP (T)

C O M M O N O R D E R

Heard the learned counsel for the petitioners and the learned Additional Government Pleader (Taxes) for the respondent, who accepts notice on behalf of the respondent and with their consent, the main writ petitions themselves are taken up for hearing.

2. The Petitioners have come forward with these writ petitions challenging the orders of the respondent passed in TIN 33182701394/2008-09, TIN 33502700151/2009-10, 2010-11, TIN 33182701394/2011-12, TIN 33502700151/2012-13 and 2011-12 respectively dated 28.11.2014.

3. The case of the petitioners is that they are engaged in the manufacture of sale of Hank Yarn as well as Cone Yarn. According to the petitioners, Cone Yarn is taxable goods whereas Hank Yarn is an exempted goods. Further, according to them, while filing the returns, they worked out the reversal of ITC in so far as it relates to availing of ITC on purchase of capital goods by adopting the proportion referred to in Rule 10(4)(e) of the Tamil Nadu Value Added Tax Rules. The petitioners further submitted that they received notices dated 26.11.2014 and proceedings dated 28.11.2014 along with the demand for the respective assessment years, which were despatched on 05.01.2015 and received by them on 06.01.2015. In the notices dated 26.11.2014, it was stated that the petitioners were liable to reverse the ITC since they have not complied with reversal ITC as per the rules mentioned supra and they have to file objections within 15 days. In the same cover, proceedings dated 28.11.2014 were also enclosed, in which the proposal was confirmed. According to the petitioners, the proceedings dated 28.11.2014 are without reference to the notices dated 13.02.2014 invoking the provisions of Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006.

4. Admittedly, in the impugned orders dated 28.11.2014, there were no reference about the notices dated 26.11.2014. The learned counsel for the petitioners submitted that further in the impugned orders though they have stated that dealers received the notices, no date has been mentioned. The relevant portion of the impugned notices reads as follows:-

> "......The dealers received the notice on .02.2014 but they have not filed any objections so far".

According to the learned counsel for the petitioners, no notice dated 13.02.2014 was served on the petitioners. Since both the proceedings viz., notices dated 26.11.2014 and the orders dated 28.11.2014 came in the same cover and the respondent has not even referred to the notices dated 26.11.2014 in the orders dated 28.11.2014, I am of the view that there is a clear violation of principles of natural justice and the approach adopted by the respondent is perfunctory. That apart, according to the learned counsel for the petitioners, they were not granted time to file objections and even the reversal of ITC as per Rule 10(4)(3)(e) of the VAT Rules, 2007 were not considered and hence the impugned orders dated 28.11.2014 are liable to be set aside.

5. The learned Additional Government Pleader (Taxes) is unable to refute the contentions of the learned counsel for the petitioners.

6. While going through the averments and the contentions that are supported by the documents filed in the typed set of papers, it is seen that the impugned orders dated 28.11.2014 have not referred to the notices dated 26.11.2014 and that there is a blank about the notice date received by the petitioners. Hence, I have no other option except to set aside the orders impugned in these

writ petitions.

7. In view of the above, the impugned orders dated 28.11.2014 are set aside and the matters are remitted back to the respondent to consider the cases afresh and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioners. The respondent is directed to comply with the said direction within a period of four weeks from the date of personal hearing to be fixed by the department. In case the petitioners fail to avail the opportunity of personal hearing on the date fixed by the authority, it is open to the authority to pass orders based on the available records, within the stipulated time.

Accordingly, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
The Assistant Commissioner(CT)
Salem Rural Circle Salem.

1 CC to Government Pleader[Taxes] SR 13061

+1cc to M/s.N.Inbarajan, Advocate SR.No.12533

W.P.Nos.6151 to 6156 of 2015

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gp/17.03.2015