IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.7537 to 7539 of 2015 and M.P.Nos.1 to 1 of 2015

Tvl.Sri Nivaasam Associates,
rep. by its Proprietor ...Petitioner in all the cases

Vs.

The Commercial Tax Officer,
Nandanam Assessment Circle,
Chennai-600 028. ...Respondent in all the cases

Prayer in all the cases:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in the impugned orders in TIN No.33411542748/2011-12, 2012-13 and 2013-14 respectively dated 13.02.2015 and to quash the same

For Petitioner in all the cases : Ms.Radhika Chandrasekhar

For Respondent in all the cases : Mr.Kanmani Annamalai AGP (T)

C O M M O N O R D E R

With the consent on either side the Writ Petitions are taken up for final disposal at the admission stage.

2.The petitioner has come forward with the aforesaid prayer.

3.The only grievance of the petitioner is that when proposing to revise the assessment already made and finalised, the clarification given to some other person shall not be made applicable to the petitioner. The petitioner has relied upon Section 48-A(3) of the Tamil Nadu Value Added Tax Act, 2006, which is extracted below:

> "Section 48-A(3) The order of the authority shall be binding,-
> (i)on the applicant who has sought for the clarification or advance ruling;
> (ii)in respect of the goods in relation to which the clarification or advance ruling was sought; and
> (iii)on all the officers working under the control of the Commissioner of Commercial Taxes."

4.Learned counsel for the petitioner further contended that the assessment officer has simply recorded the objection and finally rendered a finding that clarification issued in some other case is applicable to the petitioner. The petitioner has also relied upon a decision of this Court in the case of Tvl.Venkateswara Industries vs. The Special Commissioner and Commissioner of Commercial Taxes and another dated 18.12.2014 passed in W.P. Nos.5510 to 5513 of 2008 and the relevant paragraph 8 is extracted below:

> ".....8.The Assessing Officer merely recorded the objections given by the petitioner in a single line stating that the dealer has filed their contentions and the contention was carefully examined and found not accepted. Therefore, the Assessing Officer was purely guided by the clarification issued and the manner in which the Assessing Officer has proceeded to confirm the proposal is untenable in law......"

5.Learned Additional Government Pleader appearing for the respondent is unable to distinguish or refute the contention raised by the petitioner.

6.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent and perused the documents available on record.

7.Since it is an admitted case, the officer without taking any independent decision well within the jurisdiction, cannot mechanically apply the clarification given in some other case. Hence, I set aside the impugned orders and remit the matters to the authority for fresh consideration, on merits, if so advised.

8.Accordingly, the Writ Petitions are allowed. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

vga Sub Assistant Registrar

To

The Commercial Tax Officer,
Nandanam Assessment Circle,
Chennai-600 028.

+3cc's to Mr.K.Vaitheeswaran, Advocate, S.R.No.15181

W.P.Nos.7537 to 7539 of 2015

RSY(CO)
CA(01/04/2015)