IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.19695 to 19698 of 2012
&
M.P.Nos.1 to 1 of 2012 (4 mps)

Babu Earth Movers
Represented by its Proprietor
M.Babu
1190/6 Kottamitta
Gudiyatham
Vellore District
Pin 632 601 .. Petitioner in all the petitions

Vs.

The Commercial Tax Officer
Gudiyatham (East) Assessment Circle
Gudiyatham .. Respondent in all the petitions

Prayer in W.P.No.19695 of 2012 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33524243022/2008-09 dated 13.07.2012 and quash the same.

Prayer in W.P.No.19696 of 2012 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33524243022/2009-10 dated 13.07.2012 and quash the same.

Prayer in W.P.No.19697 of 2012 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33524243022/2010-11 dated 13.07.2012 and quash the same.

Prayer in W.P.No.19698 of 2012 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33524243022/2011-12 dated 13.07.2012 and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.A.N.R.Jayapratap
Additional Govt. Pleader (T)

C O M M ON O R D E R

The petitioner has filed these writ petitions to quash the proceedings of the respondent dated 13.07.2012 made in TIN No.33524243022/2008-09, TIN No.33524243022/2009-10, TIN No.33524243022/2010-11 and TIN No.33524243022/2011-12.

2. The petitioner is a registered dealer engaged in the business of buying and selling of sand and Jelly within the State. According to the petitioner, he is not liable to pay the tax insofar as the purchases were made locally from the registered dealers by paying the tax on such purchases. However, on the instruction from the Enforcement Wing, the petitioner filed monthly returns from the year 2008-09 to 2011-12 and the respondent has also passed assessment order under Section 22(2) of the TNVAT Act, 2006 by accepting the returns filed by the petitioner on 08.03.2012 claiming Input Tax Credit (ITC) and hence, there is no question of reversing the Input Tax Credit. Further, it is stated that the respondent initiated proceedings invoking Section 27 of the Act on 12.06.2012 in which it is stated that the petitioner is not eligible to avail Input Tax Credit as per Section 19(11) of the Act as they have not filed the return in time and therefore, the ITC claimed in the monthly return is proposed to be reversed. According to the petitioner, since the respondent has already accepted the return on 12.06.2012 and allowed ITC, invoking Section 19(11) of the Act to reverse the ITC is illegal and against the provisions of the Act.

3. It has been stated in the notice dated 12.06.2012 that the petitioner has not filed the return in time and hence, the assessment has to be done under Section 22(4) of the TNVAT Act, 2006 and in that event the opportunity of being heard should be given. Since there is violation of principles of natural justice, the impugned order dated 13.07.2012 is liable to set aside and the matter has to be remanded back to the concerned authority for fresh consideration.

4. In the result, the writ petitions are allowed and the impugned orders dated 13.07.2012 made in TIN No.33524243022/2008-09, TIN No.33524243022/2009-10, TIN No.33524243022/2010-11 and TIN No.33524243022/2011-12 are set aside and the matter is remitted back to the concerned authority to proceed against the petitioner in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Commercial Tax Officer
Gudiyatham (East) Assessment Circle
Gudiyatham.

1 cc to The Special Government Pleader(T),Sr.No18650

W.P.Nos.19695 to 19698 of 2012 &
M.P.No.1 of 2012

mp(co)
pmk.17.4.2015