IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.12507 & 12508 of 2016 &
W.M.P.Nos.10821 to 10824 of 2016

M/s.Jafarali Stores
Rep. by its Proprietor - A.Amanullah NO.25
Balu Udaiyar Street
Vandavasi
Tiruvannamalai District .. Petitioner in both W.Ps

v.

1 The State of Tamilnadu
Rep. by The Secretary
Commercial Taxes and Registration Department
Fort St. George
Chennai-9.

2 The Commercial Tax Officer
Vandavasi Tiruvannamalai District .. Respondents in both W.Ps

W.P.No.12507/2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, Calling for the records on the file of the 2nd respondent in his impugned proceedings made in TIN No.33664602621/ 2012- 13, dated 29.02.2016 and quash the same.

W.P.No.12508/2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, Calling for the records on the file of the 2nd respondent in his impugned proceedings made in TIN No.33664602621/ 2013- 14, dated 29.02.2016 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondents : Mr.S.Kanmani Anamalai
Addl. Govt. Pleader (T)

COMMON ORDER

The petitioner has filed the above writ petitions to issue a Writs of Certiorari to call for the records on the file of the first respondent in TIN No.33664602621 for the assessment years 2012-13 and 2013-14, dated 29.02.2016 and to quash the same.

2. It is the case of the petitioner that they are dealer in Electronics at Vandavasi and assessee on the file of the second respondent. The petitioner company were assessed on a total and taxable turnover for the assessment years 2012-2013 and 2013-2014 under section 27 of the Tamil Nadu Value Added Tax Act, 2006 by the proceedings of the second respondent dated 28.05.2015. This court, in the writ petitions in W.P.Nos. 21772 and 21773 of 2015, dated 23.07.2015, had directed the second respondent to reconsider the case of the petitioner on the basis of revised returns filed for the months of February and March 2013 and February and March 2014 and pass orders in accordance with law. The second respondent had issued a notice dated 08.01.2016 stating that the purchase omission pointed out in the order dated 28.5.2015 has not been reported in the revised return. The notice issued by the second respondent dated 8.1.2016 is nothing but retaliation of the same point and calling for objections to be filed by the petitioner. The petitioner filed Form Q under Rule 8(2) of TNVAT Rules, 2007 read with section 23 of the TNVAT Act, 2006. As per section 23 of TNVAT Act, when an assessee claims identical question of law pending on the file of High Court or before the Hon'ble Supreme Court of India and when the petitioner files a declaration Form for verification in the prescribed manner, the Assessing Authority shall not raise such question of law. Without disposing of Form Q filed by the petitioner, the first respondent had passed the impugned orders against the provisions of Section 23 of the TNVAT Act, 2006.

3. This Court, in similar circumstances, in W.P.Nos.11790 of 2015, etc., batch, by order dated 25.04.2014, set aside the impugned orders passed by the second respondent therein and remitted the matter back to the Assessing Officer for fresh consideration. Further, this court directed the second respondent therein to pass separate orders in respect of Form Q first and thereafter pass assessment orders.

4. Mr.Kanmani Annamalai, learned Additional Government Pleader (Tax) appearing for the respondents submitted that the issue involved in the present writ petitions are identical to W.P.Nos.11790 of 2015, etc., batch.

5. In view of the submissions made by the learned counsel on either side, following the orders passed in W.P.Nos.11790 of 2015, etc., batch, the impugned orders dated 29.02.2016 are liable to be set aside. Accordingly, the impugned orders are set aside and the matters are remitted back to the Assessing Officer for fresh consideration. The Assessing Officer shall pass separate orders in respect of Form Q first and thereafter pass assessment orders.

With these observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1 The Secretary,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai-9.

2 The Commercial Tax Officer,
Vandavasi, Tiruvannamalai District.

+1cc to the Government Pleader Sr.22622

+ 2 ccs to Ms.R.Hemalatha, Advocate Sr 22952 (13/6/16)

W.P.Nos.12507 & 12508 of 2016 &
W.M.P.Nos.10821 to 10824 of 2016

scd(CO)
srg(25/04/2016)