IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.12926 to 12930 of 2016
and W.M.P.Nos.11303 to 11307 of 2016

Tvl.R.J.Tea Corporation,
rep by its Proprietor Dharmesh Ramesh Nagda
No.51/52, ABC, RR Layout,
R.S.Puram,
Coimbatore - 641 002. ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (CT),
R.S.Puram (East) Assessment Circle,
Coimbatore - 641 018. ... Respondent in all W.Ps

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records of the respondent in his proceedings in TIN: 33292141983/2014-15, 2012-13, 2010-11, 2011-12, 2013-14 dated 29.01.2016 and to quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
(in all W.Ps)

For Respondent : Mr.S.Kanmani Annamalai,
(in all W.Ps) Additional Government Pleader (Tax)

C O M M O N O R D E R

The petitioner has filed the above Writ Petitions to issue writs of certiorari to call for the records of the respondent in his proceedings in TIN: 33292141983 for the assessment years 2014-15, 2012-13, 2010-11, 2011-12, 2013-14 dated 29.01.2016 and to quash the same.

2.It is the case of the petitioner that it is a registered Dealer under the TNVAT Act, 2006 and an Assessee on the file of the respondent. The petitioner is doing business in Tea and the monthly returns in Form-I filed by the petitioner were accepted every month and after 12 months, the assessment deems to have been completed in accordance with Section 22(2) of the Act. The notice under Section 27 of the Act was issued on the basis of the report said to have been received from the Departmental Website and on the said basis, there was a proposal for revision of assessment on the ground that the selling Dealer has not filed the monthly returns in Form-I with payment of tax to the respective Assessing Officer and the respondent had proposed to reject the returns already submitted by the petitioner. The petitioner gave a reply to the respondent along with a copy of the judgment of this Court made in W.P.Nos.8661 to 8663 of 2015 dated 26.03.2015 and requested the respondent to drop the proposal on the ground that simply because the selling Dealer has not made payment of tax to the respective Assessing Authority with monthly returns, liability cannot be fastened on the Buyer. According to the petitioner, the respondent confirmed the proposal as it is, without taking note of the reply and the copy of the judgment sent by the petitioner, stating that the petitioner had not furnished the list of purchasing Dealers with TIN Number before the Audit Officers. The learned counsel appearing for the petitioner submitted that this Court had repeatedly held that the Assessing Authority being a quasi judicial authority has to independently consider the materials submitted before him at the time of finalization of the assessment proceedings and at any circumstances, he cannot be permitted to implement the proposal received from the Enforcement/Audit Officers. The learned counsel also relied upon a judgment of this Court reported in (2012) 50 VST 179 [Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai - 6], wherein this Court in similar circumstances set aside the order passed by the respondent.

3.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) taking notice for the respondent submitted that as against the judgment reported in (2012) 50 VST 179 [Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai - 6], the respondent therein preferred a Writ Appeal in W.A.No.2123 of 2013. Further, the learned Additional Government Pleader fairly submitted that the Division Bench has not granted any interim order in the Writ Appeal.

4.On a perusal of the judgment reported in (2012) 50 VST 179 [Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai - 6], it is clear that the issue involved in the present Writ Petition is identical.

5.Since the Division Bench has not granted any interim order, following the ratio laid down in the said judgment, the impugned orders dated 29.01.2016 are liable to be set aside. Accordingly, the same are set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to decide the matter afresh, after considering the returns filed by the Assessee.

6.With these observations, the Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
R.S.Puram (East) Assessment Circle,
Coimbatore - 641 018.

+1 cc to Mr.R.Senniappan, Advocate, sr.21812
+1 cc to The Special Government Pleader, sr.22241

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kra 12.04.2016