IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.12545 to 12547 of 2014

M/s. Treads Direct Limited,
Door No.2000, Trichy Road,
Singanallur, Coimbatore 641 005. .. Petitioner in all W.Ps.

Versus

The Assistant Commissioner (CT) (FAC),
Office of the Assistant Commissioner (CT),
Singanallur Assessment Circle,
Coimbatore 641 018. .. Respondent in all W.Ps.,

Common Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in TIN No.339826400/2010-2011, 2011-12 & 2012-13 dated 28.03.2014, quash the same as the impugned order is beyond the powers conferred under Entry 54, List II, Seventh Schedule and Article 246 of the Constitution of India and Section 5 of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules 2007 and violative of proviso to section 27(2) of TNVAT Act and violative to the the principles of natural justice.

For Petitioner : Mrs.Radhika Chandrasekhar

For Respondent : Mr.S.Kanmani Annamalai, AGP

C O M M O N O R D E R

Heard Mrs.Radhika Chandrasekhar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent . With the consent on either side, the Writ Petition itself is taken up for final disposal.

2. In this Writ Petition, the petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act), has filed these Writ Petitions challenging the orders of assessment for the years 2010-11, 2011-12 and 2012-13.

3. The first ground on which the impugned order has been challenged is by contending that opportunity of personal hearing was not granted. Secondly, it is submitted that the authority rejected the contention of the petitioner that they have not been maintaining the accounts for retrading receipts and that is why they adopted the percentage of 70:30 in terms of the procedure under Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules, 2007, and this could not have been rejected by the respondent as an after thought. Further, the learned counsel submitted that from October 2012 onwards, they have been maintaining accounts and only for the anterior period, that is prior to October 2012, they have not been maintaining the accounts, but they have got records to show that 30% of the labour component, service tax has been remitted. Therefore, it is submitted that if an opportunity is granted to the petitioner to go before the Assessing Officer and produce all the records including the books of accounts from October 2012 onwards, so that the assessment can be redone.

4. After hearing the learned counsels for the parties and considering the materials placed on record, this Court is of the view that one more opportunity can be granted to the petitioner, since the petitioner states that they have got records pertaining to the remittance of the service tax to prove their bonafides that they adopted the 70, 30% ratio, because they were not maintaining the books of accounts for the retrading receipts. Further, they claimed that they have been maintaining books of accounts from October 2012.

5. In the light of the above, the petitioner is directed to treat the impugned proceedings as a show cause notice and submit a detailed objection setting out all the facts and enclosing copies of records to substantiate their case, within a period of three weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. Till the assessments are redone, the tax and penalty as demanded in the impugned proceedings shall remain stayed

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

The Commercial Tax Officer,
Adyar I Assessment Circle,
No.46, C.P.,Kumarasamy Raja Salai,
Chennai - 600 028.

+ 1 cc to The Special Government Pleader (Taxes) Sr.No.64653

W.P.Nos.12545 to 12547 of 2014

CO/RSY

RRI 04/01/2017