IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.15999 to 16001 of 2014
and
M.P.Nos.1 to 1 of 2014

M/s George Enterprises
rep. By its Proprietor,
No.15, Nelson manickam Road,
Choolaimedu,
Chennai - 600 094 ...Petitioner in all the Writ Petitions

Vs

The Assistant Commissioner (CT)
Vadapalani - I Assessment Circle,
Chennai- 600 006 ...Respondent in all the Writ Petitions

Prayer : Writ Petitions have been filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33901460077/2008-09; 2007-08 and 2006-07 respectively and quash the Assessment orders dated 30.04.2014; 19.05.2014 and 19.05.2014 respectively passed therein.

For Petitioner : No Appearance

For Respondent : Mr.Manokaransundaram
Additional Government Pleader

C O M M O N O R D E R

None appears for the petitioner. Heard the learned Additional Government Pleader appearing for the respondent.

2. In these Writ Petitions, the petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamilnadu Value Added Tax Act, 2006 and the Central Sales Tax Act has challenged the orders of assessments dated 30.04.2014 and 19.05.2014 under the provisions of the TNVAT Act for the years 2008-2009; 2007-2008 and 2006-2007 respectively.

3. On the perusal of the impugned proceedings, it is evidently clear that the same have been passed after affording reasonable opportunity to the petitioner to submit objections to the proposal given in the notices dated 10.08.2010; 22.12.2009 & 08.02.2010 respectively and after affording an opportunity of personal hearing. The impugned orders of assessment are speaking orders and reasons have been assigned therein.

4. In the grounds raised in the Writ Petitions, apart from stating the legal provisions, more particularly with reference to Section 19(20) of the TNVAT Act, the petitioner would state that the assessing officer failed to note that the petitioner's selling price for all the goods purchased from the respective vendors (who have issued the credit not for discount as above) is more than the price charged by the vendors for the respective goods. It is further contended that there is absolutely no iota of proof that the petitioner has sold the goods at a price lower than its purchased price so as to embark on a revision of assessment. Further, it is contended that the respondent has failed to understand that reimbursement of expenses incurred by the petitioner for promotion of the vendor's goods through advertisement, stalls in exhibition etc., has nothing to do with the purchase price or selling price of the goods and that they are not liable for tax. However, the petitioner would contend that method and manner of giving discount is relevant in deciding the claim of nature of discount.

5. All the above grounds raised by the petitioner revolve around the factual issue, which ought to have been canvassed before the authority. This Court exercising power under Article 226 Constitution of India will not examine complicated and disputed questions of fact, especially, those arising out of taxation matter. It is settled legal principle that in taxation matters, the party should not be permitted to bypass the appellate procedure available unless and until extraordinary circumstances are shown by the said party.

6. In the instant case, there is no such extraordinary circumstances and all aspects are factual. Therefore, the petitioner has to necessarily avail alternate remedy available under the Act.

7. Accordingly, the Writ Petition is dismissed as not maintainable giving liberty to the petitioner to file appeal before the appellate authority. If the appeal is filed within a period of 30 days from the date of receipt of copy of a order, the appellate authority shall entertain the appeal without reference to limitation. At the time when the Writ Petitions

were entertained, Interim Order was granted on 20.06.2014 granting stay on condition that the petitioner pays a sum of Rs.10,00,000/- (Rupees ten lakhs only) altogether or 10% of the tax amount in respect of the each assessment year.

8. The learned Additional Government Pleader appearing for the respondent does not have instructions as to whether the petitioner has complied with the conditional order. In the event, the petitioner has complied with the conditional order, the Appellate Authority while considering the amount to be paid towards pre-deposit shall give credit to the amount, which the petitioner has remitted pursuant to the Interim order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd

To

The Assistant Commissioner (CT)
Vadapalani – I Assessment Circle,
Chennai- 600 006.

+1cc to Mr.P.V.Sudakar, Advocate, S.R.No.42245
+1cc to the Special Government Pleader(T), S.R.No.42184

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SVI(CO)
CA(08/08/2016)