IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.06.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.23519 to 23525 of 2015 &
M.P.Nos. 1 to 1 of 2015

1 M/s.Thiruneelakandar Agencies
Repd. by its Proprietor
79/19E No.1 C.S.I. Buildings
Fort Main Road, Salem-636 001. .. PETITIONER in all WPs

Vs

1 The Assistant Commissioner(CT)
Shevapet Circle
Salem. .. RESPONDENT in all WPs

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the impugned proceedings of the respondent in TIN 33622640430/2007-2008 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 respectively and quash the impugned order dt 29.05.2015 as the same is passed contrary to the order dated 01.04.2015 passed by this Court in WP.Nos.9704 to 9710/2015 filed by the petitioner and also contrary to section 19(1) of the TNVAT Act read with Rule 10(2) of the TNVAT Rules and also contrary to the law laid down by this Court in the decisions in the case of M/s.Althaf Shoes (P) Ltd. reported in 50 VST 179.

For Petitioner : Mr.P.Rajkumar
(in all W.Ps)

For Respondent : Mr.Manokaran Sundaram
(in all W.Ps) Addl.Government Pleader

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned Counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing on behalf of the respondent and with the consent of learned counsel appearing on either side, these writ petitions taken up for final disposal.

2.(i) The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and they are dealing with Commercial and Decorative

Plywoods, Flush Doors etc.

(ii) The petitioner is before this Court for the second time raising identical contentions. Earlier the respondent issued a notice dated 14.01.2015, proposing to reject the returns filed by the petitioner for the assessment years 2007-08 to 2013-14, on the ground that on cross verification of monthly returns filed for the relevant years with the Department's website, it was found that the petitioner has reported higher purchases and availed ITC in excess. The petitioner requested time for producing the necessary particulars, by representation dated 22.01.2015.

(iii) Though the respondent had received the same, he proceeded to frame assessment exparte and confirmed the proposal in the notice by passing assessment order dated 23.02.2015. Those orders were put to challenge by the petitioner in W.P.Nos.9704 to 9710 of 2015. The petitioner by relying upon the decision of this Court in the case of ALTHAF SHOES (P) LTD., v. ASSISTANT COMMISSIONER (CT), VALLUVARKOTTAM ASSESSMENT CIRCLE, CHENNAI [(2012) 50 VST 179 (Mad)]; SRI VINAYAGA AGENCIES v. ASSISTANT COMMISSIONER (CT) VADAPALANI I ASSESSMENT CIRCLE, CHENNAI AND ANR [(2013) 60 VST 283 (Mad)] and the decision rendered by this Court in W.P.Nso. 25996 to 25998 of 2014 dated 17.10.2014, contended that the orders of assessment dated 23.03.2015, was passed contrary to the section section 19(1) of the TNVAT Act and contrary to the legal positions settled by this Court in the aforementioned decisions.

(iv) The Court after hearing the learned Additional Government Pleader for the respondent, who in fact had accepted the legal position, remitted the matter to the authority to consider the case afresh on merits. However, once again the respondent has passed an identical order rejecting the petitioner's request and confirmed the proposal of reversing the Input Tax Credit availed by the petitioner.

3.The impugned orders of assessment are non-speaking orders, without taking into consideration the legal position and without affording reasonable opportunity to the petitioner. Therefore, the impugned orders have to be necessarily quashed.

4(a) Accordingly, the Writ Petitions are allowed and the impugned orders are quashed.

(b) Under normal circumstances, this Court would remit the matter to the Assessing Officer/respondent to redo the assessment. However, since the respondent had failed to take note of the directions issued in the earlier writ Petitions, this Court deems it appropriate that the matter should be entrusted to some other Assessing Officer and not to Mr. P.Saravanakumar, who functioned as Assistant Commissioner (CT), Shevapet Assessment Circle, Salem. For which purpose, this Court directs the Joint Commissioner of Commercial Taxes (Territorial), Salem, to assign the files of the petitioner for the relevant assessment years to a different Assessing Officer, who shall redo the assessment after issuing notice to the petitioner and after affording the opportunity of personal hearing and after taking note of the legal position settled in the aforementioned decisions.

(c) No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To
1 The Assistant Commissioner(CT)
Shevapet Circle
Salem.

2. The Joint Commissioner of
Commercial Taxes (Territorial), Salem.

1 cc to Special Government Pleader (Taxes), sr.32591
1 cc to Mr.P.Rajkumar, Advocate, sr.31902

W.P.Nos. 23519 to
23525 of 2015

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