IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.18847 to 18851 of 2016 and
W.M.P.Nos.16445 to 16449 of 2016

Khazhana Jewellery Pvt. Ltd.,
Represented by its
Assistant General Manager – Taxation,
T.L. Venkateswaran,
252-A, T.T.K. Road, Alwarpet,
Chennai – 600 018. .. Petitioner in all WPs.

Vs.

The Assistant Commissioner (CT)
Royapettah Assessment Circle,
46, Greenways Road,
Chennai – 600 028. .. Respondent in all WPs

Prayer:Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the respondent herein in TIN/33680720961/2007-08, 2008-09, 2009-10, 2010-11, 2011-212 dated 03.05.2016.

For Petitioner : Mr.N.Prasad
for all WPs

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader
for all WPs

COMMON ORDER

Heard Mr.N.Prasad, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent and perused the materials placed on record, including the written instruction given by the respondent to the learned Additional Government Pleader vide letter dated 28.06.2016.

2.These writ petitions can be segregated into two groups viz., the first set of cases in WP.Nos.18847 to 18849 of 2016 which relate to the assessment years 2007-2008, 2008 to 2009-2010 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act); and WP.Nos.18850 & 18851 of 2016 pertain to the assessment years 2011-2011 and 2011-2012 under the TNVAT Act. The impugned orders have been challenged on the ground of violation of principles of natural justice. Therefore, this Court has taken up for consideration as to the validity and the propriety of the impugned orders. If this Court was called upon to exercise its jurisdiction to examine the factual aspects, this Court would have definitely relegated the petitioner to avail the appellate remedy under the Act. Therefore, it has to be decided as to whether the impugned orders suffer from violation of principles of natural justice. To test as to the nature of relief that the petitioner would be entitled to, the following facts would be relevant.

3.The petitioner is a Private Limited Company incorporated under the Companies Act, 1956, engaged in the activity of manufacture and sales of articles of jewellery of gold, silver and other special metal and the said company is an assessee on the file of the respondent. On 04.11.2009 the officials of the Enforcement Wing conducted an inspection in the place of the petitioner. Thereafter, the petitioner stated that the assessment for the relevant years was completed under Section 22(2) of the TNVAT Act on 30.06.2010. A second inspection was conducted by the Enforcement on 09.08.2011 for the period upto July 2011, pursuant to which, after about 1 ½ years, a notice is issued by the respondent on 15.04.2013 proposing to reverse the input tax credit by referring to Section 19(2)(ii). The allegation being that tax paid for input purchases in Tamil Nadu are used in manufacturing of of goods outside the State. Separate notice is issued on the same date i.e. on 15.04.2013 referring to Section 19(9)(iii) to reverse the input credit on the ground of process loss. On 16.10.2013, the petitioner submitted a reply to the notice dated 15.04.2013 with reference to process loss stating that the entire inputs are used in manufacturing jewellery. Alternatively it is stated that the respondent should not adopt an arbitrary ad hoc percentage of 8% as process loss. While so, on 13.11.2013, the Assistant Commissioner (CT) conducted a VAT Audit for the period from 2007-2008 to 2013-2014. It is thereafter the petitioner on 02.12.2013 submitted his reply to the notice dated 15.04.2013 proposing to reverse the input tax credit under Section 19(2) stating that no part of inputs purchased inside the State of Tamil Nadu is transferred outside the State for use in manufacturing activity outside the State. After about two years, on 31.08.2015, VAT Audit was conducted and based on which, the respondent issued a notice on 25.10.2015, proposing to reverse the input tax credit on various issues and in respect of the demand under Section 19(4), it was lower than what was contemplated in the earlier notice dated 15.04.2013. Opportunity of personal hearing was afforded vide notice dated 06.11.2015. The petitioner submitted their reply and marked copies of reply dated 16.10.2013 and 02.12.2013 respectively and requested the personal hearing to be fixed some time in January 2016. The respondent directed the petitioner to appear before him within 15 days of the receipt of the notice dated 21.12.2015. The petitioner in the meantime, submitted a reply on 28.12.2015 to the notice dated 25.10.2015 which was based upon the VAT Audit which was conducted on 31.08.2015. However, up to April 2016, there was a stalemate in the matter and on 28.04.2016, the petitioner was orally informed to produce the necessary documents. According to the petitioner, they have filed a bunch of documents on 28.04.2016 and on 03.05.2016 the impugned assessment orders have been passed.

3a.As pointed out earlier, there were two issues, one is regarding the reversal on the process loss and the other is, the reversal of the alleged stock transfer. On a perusal of the impugned orders, more particularly, in page 5 of the impugned order (no page numbers and no paragraph numbers given in the impugned order), it is seen that the assessment has been finalised alleging that the petitioner has not proved or reconciled or furnished the details. In fact, in the written instruction given to the learned Special Government Pleader [Taxes], the same is reiterated and in paragraph 2, it is stated that the petitioner did not ask for personal hearing. It is seen that it is not in dispute that the matter was dealt with by the respondent's predecessors and the respondent has entered into the picture during October 2015. It is not clear as to whether the respondent wanted to pursue the notices dated 15.04.2013, 06.11.2015, 21.12.2015 and according to the petitioner, the respondent did not pursue such notices. Thus, when such conflicting issues are involved, the authority ought to have directed the petitioner to appear in person and explain the transaction, especially, when they were called upon to furnish the documents and they have furnished the same on 28.04.2016 and immediately thereafter, an order has been passed, within a short span of time, especially when there were intervening holidays due to the week end. Thus, it is evidently clear that the assessment has been completed without proper dialogue and discussion. So far as the process loss is concerned, this Court had an occasion to consider as to how the process loss has to be ascertained and it deprecated the practice of the Assessing Officer in adopting an ad-hoc percentage. In fact, when the petitioner submitted his reply on 16.10.2013 they took a stand that the entire inputs purchased by the petitioner on payment of VAT are used in the manufacture of jewellery. Alternatively, they stated that an ad hoc percentage of 8% should not be adopted. However, in these writ petitions, the petitioner has been able to give a working as to what according to them is the actual percentage of the manufacturing loss. This is in the form of tabular column in paragraph 6 at page 7 of the writ affidavit which shows that there is a varying percentage with manufacturing loss according to the petitioner for the relevant assessment years.

4.The said issue was considered by this Court in a batch of cases in Interfit Techno Products Limited V. The Principal Secretary/Commissioner of Commercial Taxes, Chennai and another, [2015] 81 VST 389 (Mad.), wherein this Court took into consideration the manner in which the process loss has to be ascertained and held that the question of adopting a uniform or ad hoc percentage cannot be resorted to. These observations and directions were made bearing in mind that each assessment proceedings is an independent proceedings and the Assessing Officer cannot ignore facts. It was pointed out that whether a loss was an invisible loss or whether it was a destructive loss or whether it would fall within any one of the parameters specified in sub-section 9 to section 19, all being questions of fact, have to be established by the dealer when called upon by the authority. However, to decide the question, first of all the respondent should have called upon the dealer to explain their process and furnish all their books of accounts. Thus, the assessment proceedings having been made in a very summary manner, the same calls for interference.

5.So far as the other two writ petitions are concerned, viz., for the assessment years 2010-2011 and 2011-2012 the facts are some what identical and in these cases the petitioner while submitting their reply on 28.12.2015 specifically sought for a personal hearing and after about four months, the impugned orders have been passed alleging non reconciliation of the details, there was no hearing afforded, no opportunity given to the petitioner to do any reconciliation. Thus, in both set of cases, this Court is convinced that the impugned assessment orders have been made in a very summary manner without affording reasonable opportunity to the petitioner to put forth their submission and explain the nature of transactions.

6.In the light of the above, the Writ Petitions are allowed and the impugned orders are set aside and the matters are remanded to the respondent to re-do the assessment afresh after affording an opportunity of personal hearing, calling for further details, examining the books of accounts and records placed by them and thereafter, pass a speaking order on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sgl

To

The Assistant Commissioner (CT)
Royapettah Assessment Circle,
46, Greenways Road,
Chennai - 600 028.

1 cc to M/s.N.Inbarajan, Advocate, sr.49198
1 cc to Government Pleader,(Taxes), sr.49281

W.P.Nos.18847 to 18851 of 2016

30.08.2016