IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.25938, 25939, 25940 and 25941 of 2015
and
M.P.Nos.1, 1, 1 & 2 and 1 & 2 of 2015

M/s.Sulochana Cotton Spinning
Mills (P) Limited,
Represented by S.Krishna Kumar,
Managing Director,
Palladam Road, Tirupur ... Petitioner in all W.Ps

Vs

1. The Appellate Deputy Commissioner (CT),
CT Buildings, Palghat Road, Pollachi.

2. The Assistant Commissioner (CT),
Tirupur (South) Assessment Circle,
Tirupur. ... Respondents in all W.Ps

Prayer in W.P.No.25938 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in A.P.VAT.21/2015 dated 13.07.2015 and quash the same as being without jurisdiction, invalid and illegal, and further directing the first respondent to remand the appeal back to the second respondent for fresh disposal in accordance with law after issue of show cause notice and grant of opportunity.

Prayer in W.P.No.25939 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in A.P.VAT.24/2015 dated 13.07.2015 and quash the same as being without jurisdiction, invalid and illegal, and further directing the first respondent to remand the appeal back to the second respondent for fresh disposal in accordance with law after issue of show cause notice and grant of opportunity.

Prayer in W.P.No.25940 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the second respondent in TIN: 33982320908/2013-14 dated 27.02.2015 and quash the same as being without jurisdiction, invalid and illegal.

Prayer in W.P.No.25941 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the second respondent in TIN: 33982320908/2013-14 dated 19.11.2014 and quash the same as being without jurisdiction, invalid and illegal.

For Petitioner in all W.Ps. : Mr.C.Venkatraman

For Respondents in all W.Ps. : Mr.S.Kanmani Annamalai Special Government Pleader

COMMON ORDER

Heard Mr.C.Venkatraman, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Special Government Pleader appearing for the respondents and with their consent, these Writ Petitions were taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006 (TNVAT Act) (hereinafter referred to as “the Act”) on the file of the second respondent. In these four writ petitions, the petitioner has challenged the two orders passed by the first respondent, namely, the Appellate Authority, rejecting two appeal petitions as not entertainable and two other writ petitions challenging the assessment orders against which the petitioner had filed the appeals. The necessity to file the two appeals arose because the Assessing Officer passed two assessment orders for the same year 2013-2014 by splitting up the same into two periods from January 2014 to March 2014 and April 2013 to December 2013. The Appellate Authority entertained the appeal petition as the petitioner had effected pre-deposit of 25% of the disputed tax. Subsequently, the said application was heard and the petitioner was directed to deposit further 25% of the disputed tax which he has complied with and as on date, the petitioner has deposited 50% of the disputed tax. It is thereafter the appeal was taken on file and it is stated that elaborate submissions were made by the learned counsel for the petitioner before the first respondent/Appellate Authority and those arguments were on the merits of the assessment. However, the petitioner on receipt of the impugned orders passed by the first respondent was surprised to find that the first respondent held that the appeals are not entertainable since the impugned orders of assessment appears to have been passed under Section 25 of the Act though the Assessing Officer has not specifically mentioned the provisions under which the order of assessment has been passed.

3.The learned Additional Government Pleader has produced the written instructions given by the first respondent dated 12.09.2015, in which also, the first respondent has stated that it is clear case of assessment under Section 25 of the Act and the remedy for the petitioner is to file a revision under Section 45 of the Act. The power of the Appellate Authority has been conferred in terms of Section 51 of the act and if an order has been passed under Section 27 (1), (2), (3) or (4), then an appeal lies to the Deputy Commissioner, the Deputy Commissioner herein. However, the impugned assessment order passed by the second respondent does not specifically state as to under what provision an order has been passed, except that penalty has been imposed invoking Section 27(4) of the Act.

4.Thus, in the light of the doubt entertained by the first respondent regarding the very maintainability of the appeal, the issue would be whether the order passed by the second respondent is an order under Section 25 or an order under Section 27 of the Act has to be specifically stated. Therefore, the matter necessarily has to be remitted back to the second respondent for de novo consideration. Accordingly, the writ petitions are allowed and the impugned orders passed by the second respondent are set aside and the impugned assessment proceedings are also set aside. The second respondent is directed to issue a show cause notice to the petitioner, afford a opportunity of personal hearing to them and thereafter proceed to pass the orders of assessment clearly indicating as to under what provision of law, the same are being passed. The above direction shall be complied with by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Appellate Deputy Commissioner (CT),
   CT Buildings, Palghat Road, Pollachi.

2. The Assistant Commissioner (CT),
   Tirupur (South) Assessment Circle,
   Tirupur.

+1cc to Mr.C.Venkatraman, Advocate, S.R.No.33253
+1cc to the Special Government Pleader(T), S.R.No.33552

W.P.Nos.25938,
25939, 25940 and 25941 of 2015
and
M.P.Nos.1, 1, 1 & 2 and 1 & 2 of 2015

PA(CO)
CA(04/07/2016)