In the High Court of Judicature at Madras

Dated : 20.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.26096 to 26098 of 2015 &
MP.Nos.1, 1 and 1 of 2015

M/s.Ess Emm Textiles, rep.by
its Partner ... Petitioner in all the WPs

Vs

The Commercial Tax Officer, Palladam
Assessment Circle, Tirupur. ...Respondent in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in his proceedings in TIN : 33646242999/2011-12; TIN : 33646242999/2012-13; and TIN : 33646242999/2013-14, and quash the assessment orders dated 27.7.2015 made therein

For Petitioner : Mr.P.V.Sudhakar

For Respondent : Mr.V.Haribabu, AGP

COMMON ORDER

Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act and the Central Sales Tax Act, 1956, has filed these writ petitions to quash the orders of assessment passed for the years 2011-12 to 2013-14.

3. The only ground, on which, the impugned orders have been challenged, is that an opportunity of personal hearing was not granted. According to the petitioner, they have submitted their objections on 17.7.2015 and without affording an opportunity of personal hearing, the impugned orders came to be passed on 27.7.2015.

4. When it is pointed to the learned counsel for the petitioner that in the impugned orders, it has been mentioned that a personal hearing was granted on 22.7.2015, it is stated that the said statement is incorrect, as no such opportunity was granted and in fact, all documents were produced before the officials of the Enforcement Wing and had an opportunity been been granted, the petitioner would have been in a position to establish that they are entitled to exemption.

5. In the written instructions given by the respondent to the learned Additional Government Pleader, it has been stated that the opportunity of personal hearing was afforded to the petitioner on 22.7.2015. In the light of the above, this Court is not going to disbelieve the stand taken in the impugned orders of assessment. However, the reason for rejecting the petitioner's objections is by stating that no documents were produced.

6. From the show cause notices dated 3.7.2015, it is seen that the respondent recorded the explanation given by the petitioner at the time of inspection wherein they have stated in detail about the various transactions done by them. However, the officials of the Enforcement Wing partially accepted the stand taken by the petitioner, granted 50% relief and treated the remaining 50% of the turnover as hank yarn sales. In fact, there cannot be any adhoc estimation of the sales effected by the petitioner as to whether the sales effected are hank yarn sales or otherwise and the Authority has to be specific as to why he rejected 50% of the turnover.

7. In the impugned orders of assessment, the respondent proceeded to confirm the proposals of the Enforcement Wing officials. The manner, in which, the Assessing Officer proceeded to complete the assessment has been deprecated in several decisions pointing out that the Assessing Officer is an independent Authority and uninfluenced by any report or proposal, the Assessing Authority has to finalize the assessments after considering the objections and documents. Therefore, the respondent - Authority could not have stated that the proposals arrived by the officials of the Enforcement Wing have been confirmed. Rather, he should have concluded as to why the restriction of exemption only to 50% is justifiable and this should have been done by proper reasons. Since this has not been done, the petitioner is entitled to succeed.

8. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to consider the objections of the petitioner, grant an

opportunity of personal hearing, verify the documents that they may produce and thereafter pass a speaking order on merits and in accordance with law. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//
Sub Assistant Registrar

To

The Commercial Tax Officer, Palladam Assessment Circle, Tirupur.

1 cc to Mr.B.Raveendran, Advocate, sr.34253
1 cc to Special Government Pleader (Taxes), sr.34340

WP.Nos.26096 to 26098 of 2015
and MP.Nos.1, 1 and 1 of 2015

ad co
kra 29.06.2016