IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19287 to 19289 of 2016 &
WMP Nos.16770 to 16772 of 2016

M/s Sivaskthi Agency
rep. By its Proprietrix
Mrs.M.Vimala

[PETITIONER IN THE ALL WPS.]

Vs

1.The Assistant Commissioner
CT) FAC)
Cuddalore Town Circle
No.9, C.T.Buildings,
Sub Jail Road
Manjakuppam,
Cuddalore 607 001.

[RESPONDENT IN ALL THE WPS]

Common Prayer: The Writ Petitions are filed under Article 226 of the Constitution of India, seeking for Writ of certiorari to call for the records of the respondent in TIN 33894383323/2010-11, TIN 33894383323/2011-12; (in respect of W.P.Nos.19287 & 19288 of 2016) dated 13.03.2015 and Na.Ka.A3/1111/2015 (in respect of W.P.No.19289 of 2016) dated 16.03.2016 and quash the same.

For Petitioner : Mr.R.Kumar
For Respondents: Mr.Manokaran Sundaram
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.R.Kumar, learned Counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned counsel accepting notice on behalf of the respondent and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

2(i) The petitioner who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 (herein after referred to as 'VAT Act'), is said to be carrying on the business of cement by purchasing goods from local dealers and selling them locally. The petitioner would state that they do not have registration under the provisions of the Central Sales Tax Act.

(ii) In respect of W.P.Nos.19287 and 19288 of 2016, the petitioner sought for quashing the orders of assessment passed under section 22(4) 'VAT Act' for the years 2010-11 and 2011-12, both dated 13.03.2015. In respect of W.P.No.19289 of 2016, the petitioner challenged the auction notice proposing to bring the petitioner's property for auction for recovery of the tax dues as assessed in the impugned orders of assessment dated 13.03.2015.

(iii) Since the petitioner is the same proprietary concern in all these three Writ Petitions and they have been inter connected, all the Writ Petitions have been heard together and are disposed of by this common order.

3.From the materials placed on record, it is seen that the respondent Assessing Officer has passed an order of assessment dated 13.03.2015 for the year 2010-11 under section 22(4) of the 'VAT Act'. Firstly, such an order could not have been passed without affording an opportunity of personal hearing. Therefore, on that ground itself, the said assessment order is liable to be set aside. One more reason to interfere with the order of assessment is that already the assessment is deemed to have been completed and an order had been passed on 14.02.2012. This appears to have been not taken note of by the respondent. Assuming there are materials warranting re-opening of the assessment, that could not have been done under section 22(4) of the 'VAT Act' and as rightly admitted by the learned Additional Government Pleader appearing for respondent that power under section 27 of the 'VAT Act', alone could have been invoked.

4.So far as the impugned order of assessment dated 13.03.2015 pertaining to the year 2011-12, which is also an order under section 22(4) of the 'VAT Act', has been passed without affording an opportunity of personal hearing. This is required to be done because the respondent has made equal addition while passing the order. Therefore, both the impugned orders are liable to the interfered with.

5.Accordingly, the Writ Petitions in W.P.Nos.19287 & 19288 of 2016 are allowed and the impugned orders of assessment are quashed and the respondent is directed to issue Notice to the petitioner, clearly setting out the case which the petitioner has to meet. Thereafter, it is open to the petitioner to submit their objections. The respondent is also directed to afford an opportunity of personal hearing to the petitioner and after conclusion of above exercise, shall pass orders on merits and in accordance with law, as expeditiously as possible.

6.In the light of the orders passed in W.P.Nos.19287 & 19288 of 2016, quashing the orders of assessment and remanding the matter for fresh consideration, obviously, the respondent cannot bring the petitioner's property for sale. Accordingly, W.P.No.19289 of 2016 is allowed and the impugned order dated 13.03.2015 is set aside.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rpa
To

The Assistant Commissioner (CT) FAC)
Cuddalore Town Circle
No.9, C.T.Buildings, Sub Jail Road
Manjakuppam, Cuddalore 607 001.

+3ccS to Mr.R. Kumar, Advocate, S.R.No.30666 to 30608
+1cc to the Government Pleader, S.R.No.30763

PUR(CO)
EU(15/06/2016)

W.P.Nos.19287 to
19289 of 2016