IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.31272 to 31276 of 2015
and M.P.Nos.1 to 1 of 2015

M/s. Sri Vigneswara Agencies,
Rep. By its Proprietor, Mr. G.Sugumaran,
Old No.30, New No.101 Anaikatti Street,
Tiruvannamalai - 606 601
... Petitioner in all W.Ps.

Versus

The Assistant Commissioner (CT),
Tiruvannamalai - I
Assessment Circle,
Tiruvannamalai-606 604. .. Respondents in all W.Ps.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, seeking for a writ of certiorari to call for the records of the respondent in TIN:33564520614/2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 and to quash the impugned revised orders, dated 15.09.2015, 31.07.2015, 31.07.2015, 14.08.2015, 31.07.2015, respectively, as arbitrary, unreasonable and contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006, read with Articles 14, 19 (1) (g) of the Constitution of India.

For Petitioner in all W.Ps.: Mr. V.Sundareswaran
For Respondent in all W.Ps.: Mr. Manokaran Sundaram, A.G.P.,

C O M M O N O R D E R

Heard Mr.D.Sundareswaran, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader, appearing for the respondent, in all the writ petitions. By consent of the learned counsel for both sides, the writ petitions are taken up for final disposal.

2. The petitioner-Agency, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act") and the Central Sales Tax Act, 1956 has filed these writ petitions, challenging the assessment orders for the years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12. Since, for all the assessment years, the issue raised is common, these writ petitions are heard together and are disposed of, by this common order.

3. Pursuant to an objection raised by the Accountant General, which conducted an audit, the respondent issued notice, dated 29.06.2015. Pointing out that on a scrutiny of Annexure-I, in the monthly returns filed by the petitioner, for the relevant years, it was revealed that the petitioner had exempted purchase of Oil from M/s.VVD and Sons Private Limited. The respondent pointed out that hair oil is taxable at 12.5%, under Entry-20 (Commodity Code 321 of Part 'C' under I Schedule). By referring to the advertisement given by the manufacturers, it is stated that besides producing pure coconut oil, the manufacturers also producing and marketing VVD Herbal, VVD Hibiscus and VVD Anti dandruffs. Therefore, the respondent proposes to tax the petitioner at 12.5%. Subsequently, a revised notice was issued on 20.07.2015, by which, the petitioner was directed to furnish month-wise sales value of VVD Products, on which, they have claimed exemption. The petitioner submitted their reply, on 20.07.2015, for which the respondent has passed the impugned assessment orders.

4. On a perusal of the impugned assessment orders, it is seen that, on account of the mistake committed by the petitioner (in not mentioning the specific commodity code) the assessments were finalized by the respondent, as done in the impugned orders. The petitioner did not produce any proof to show that there was sale of vegetable oil. Therefore, the manner in which the assessments were completed cannot be faulted with.

5. The petitioner has stated that the seller, namely, M/s.VVD and Sons Private Limited have stated that goods sold by them to the petitioner were classified only as an exempted commodity with Code No.765 in Annexure - II filed by them. Therefore, the petitioner would contend that the impugned assessment orders suffer from error apparent on the face of record. Further, it is stated that the revisions of assessments ought not to have been made solely based on the Accountant General's audit report.

6. In the counter affidavit filed by the respondent, a specific stand has been taken that the letter of M/s.VVD and Sons Private Limited (filed in page No.32 of the typed set of papers) is totally different from the letter, which was produced before the Department.

7. If that be so, then it is a very serious matter and the dealer is liable to be penalized. However, this Court does not wish to precipitate the matter further, but to ensure that the interest of the Revenue is also protected, this Court is of the view that this matter is required to be remitted back to the respondent, to enable the petitioner to furnish the full details, because, for the first time, before this Court, they stated that the commodity code number is '765'.

8. In the light of the above, instead of setting-aside

the impugned proceedings, the petitioner is directed to treat the impugned proceedings, as show cause notices, and submit their objection(s) to the same, within a period of two weeks from the date of receipt of a copy of this order and along with the objection(s), the petitioner shall produce the proper proof from the manufacturers, as regards the nature of products, which were sold to the petitioner, along with the commodity code(s) and other related documents. On receipt of such objection(s), the respondent shall re-do the assessments, in accordance with law, after affording an opportunity of personal hearing.

9. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srk

To

The Assistant Commissioner (CT),
Tiruvannamalai - I Assessment Circle,
Tiruvannamalai 600 604.

+1cc to Mr.V. Sundareswaran, Advocate, S.R.No.43212
+1cc to the Special Government Pleader, S.R.No.43348

TM(CO)
EU(16/08/2016)

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