IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34626 to 34633 of 2015
&
M.P.Nos.1 to 1 of 2015

M/s.Rajendra Steel Industries,
Represented by its Proprietor,
No.41/1, Armenian Street,
Chennai-600 001. ... Petitioner in all Writ Petitions

Versus

The Assistant Commissioner (CT),
Esplanade Assessment Circle,
No.116, Angappa Naicken Street,
1st Floor, Chennai-600 001. ... Respondent in all Writ Petitions

Prayer in all Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33240081391/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively and quash the impugned order dated 16.09.2015 as passed contrary to Section 19(1) of the TNVAT Act read with Rule 10 (2) of the TNVAT Rules, contrary to the law laid down by the Hon'ble Madras High Court in the decisions in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179, in the case of M/s.Jinsasan Distributors reported in 59 VST 256 and in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283 and also contrary to the principles of natural justice.

For Petitioner in all Writ Petitions : Mr.P.Rajkumar

For Respondent in all Writ Petitions : Mr.S.Kanmani Annamalai Additional Government Pleader

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner in all Writ Petitions and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent in all Writ Petitions.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as "TNVAT Act"). In these Writ Petitions, the petitioner has challenged the orders of Assessment under the TNVAT Act, for the years 2007-2008 to 2014-2015 respectively.

3. In all the Assessment Orders, four issues were pointed out by the respondent in the pre-revision notices dated 08.06.2015, viz., (1) ITC reversal on turnover not covered by C Form, (2) Tax due consequent on the reversal of ITC claimed on the purchases effected from dealers whose registration has already been cancelled, (3) ITC reversal for non production of documents under Section 19(13) of TNVAT Act and (4) Cross verification.

4. On receipt of the pre-revision notices, the petitioner submitted representation / objection on 22.06.2015, separately for all the assessment years. The copies of the objections have been filed in the typed-set of papers and it is seen that for each assessment, objections runs to 19 pages. However, with regard to defects which have been pointed out, more particularly, Defect Nos.2, 3 and 4, as referred above, the petitioner sought for details. The details sought for by the petitioner pertain to the names of the registration cancelled dealers and other related particulars. These details sought for have been exhaustively set out in the objection dated 22.06.2015. Similar objection and details have been sought for by the petitioner so far as the defect Nos.3 and 4. After request for such details, the petitioner has pointed out certain decisions of this Court in the case of Althaf Shoes (P) Ltd Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6 reported in (2012) 50 VAR 179 (MAD); in the case of M/s.Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-1, Assessment Circle, Chennai and another reported in (2013) 60 VST 283 (MAD) and in the case of Infiniti Whole Sale Limited Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle in W.P.No.9265 of 2013, dated 06.11.2014. The petitioner also submitted that the penalty is not leviable. The petitioner also relied upon the Guidelines issued by the Commissioner of Commercial Taxes in Circular No.7/2014, dated 03.02.2014, wherein, the procedure which has to be followed by considering the objections were referred to. Ultimately, the petitioner sought for a grant of personal hearing.

5. Though the respondent in the impugned order has referred to the objection / reply has stated that he has considered the same, the respondent has not furnished the details to the petitioner as sought for by them. The reasoning given with regard to the defects Nos.2 to 4 are wholly

unsustainable. Until and unless, the petitioner has been given details, they would not be in a position to effectively submit reply. Admittedly, the details have been gathered by the respondent from the Internet website of the Department. Therefore, when the petitioner is confronted with those details, full particular should be given, so that, the petitioner could give a definite answer. In the pre-revision notices, no details have been furnished, but only mentioned the turnover and the proposed reversal of Input Tax Credit. This is not sufficient, as the effective objection cannot be given to such proposal.

6. Therefore, the impugned assessments are flawed for the above reasons and the Writ Petitions are allowed and the impugned orders are set-aside and the matters are remanded to the respondent for fresh consideration. The respondent is directed to issue a supplementary show-cause notice furnishing the details with regard to the registration cancelled dealers, ITC reversal for non-production of documents and cross-verification and also furnish the other particulars which was sought for by the petitioner. After issuing such notice along with details, the petitioner is granted 15 days time to submit their objections and on receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

r n s

To

The Assistant Commissioner (CT),
Esplanade Assessment Circle,
No.116, Angappa Naicken Street,
1st Floor, Chennai-600 001.

+1cc to Mr.P.Raj Kumar, Advocate, S.R.No.62246

W.P.Nos.34626 to 34633 of 2015
&
M.P.Nos.1 to 1 of 2015

SSK(CO)
CA(28/11/2016)