IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.25557 & 25558 of 2016 &
W.M.P.Nos.21929 & 21930 of 2016

Tvl.ERO Textiles Process,
Rep. by its Proprietor S.D.Thilagavathi,
No.320/1, Ananthankadu Thottam,
Near Meenachi Theater,
R.N.Purud (P.O.),
Erode-638 605. .. Petitioner in both Writ Petitions

Versus

The Assistant Commissioner (CT),
Periya Agraharam Circle,
Erode. .. Respondent in both Writ Petitions

Prayer in both 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 records of the respondent in TIN No.33293076869/2012-13 & 2013-2014, dated 22.04.2016 and quash the same.

For Petitioner in both Writ Petitions : Mr.S.Raveekumar

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

C O M M O N   O R D E R

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner in both Writ Petitions and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of respondent in both Writ Petitions. With the consent of the learned counsel on either side, the Writ Petitions are taken up for final disposal.

2. The petitioner-Ero Textile Process, which is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred as "TNVAT Act") and Central Sales Tax Act, 1956 (hereinafter referred as "CST Act"), has filed these Writ Petitions, challenging the order of assessments for the year 2012-2013 and 2013-2014, dated 22.04.2016 .

3. The petitioner is engaged in the business of dyeing and bleaching and they had filed their Monthly Returns and Form WW for the Assessment years 2012-2013, indicating the purchases of raw materials and their output turnover as per the provisions of the TNVAT Act. The petitioner has also claimed Input Tax Credit as per the provisions of Section 19 read with Rule 10 of the TNVAT Act and Rules. In the Return and Form WW, the petitioner had reported the turnover. The petitioner states that they were deemed to be assessed on the total and taxable turnover as per Section 22(2) of TNVAT Act. Subsequently, a notice dated 11.01.2016 was issued to the petitioner stating that on verification of Form WW Audit Report for the year 2012-2013, it disclosed short reporting of the taxable turnover. Hence, the respondent proposed to revise the Assessment under Section 27(1)(a) of the TNVAT Act.

4. According to the petitioner, they had filed their objection on 03.02.2016, stating that they are processing unit and 50% dyeing process turnover only is applicable as per the provisions of TNVAT Act. Therefore, the petitioner pointed out that the notice proposing to revise the Assessments is incorrect. The respondent completed the Assessments and passed the impugned orders.

5. The learned counsel for the petitioner submitted that the impugned order is in violation of principles of natural justice, as the respondent has failed to consider the objections filed by the petitioner and Form WW and did not take into consideration the proper turnover, which was reported by the petitioner in Form WW. Though such statement is made in the impugned orders, the respondent has recorded that in spite of receipt of the pre-revision notices, the petitioner did not file their objections. In the typed-set of papers, the petitioner has enclosed the copy of the objections, dated 03.02.2016, however, there is no acknowledgment to show that the objections were delivered in the Office of the respondent. Therefore, this Court is not inclined to accept the submission made by the petitioner that they had submitted their objections.

6. Faced with the said situation, the learned counsel for the petitioner submits that one more opportunity may be granted to the petitioner to go before the Assessing Officer and explain to the Assessing Officer about the factual position and also point out the relevant entries in Form WW.

7. I heard the learned Additional Government Pleader on the above submissions.

8. Considering the peculiar facts and circumstances of the case and since even in the impugned Assessment Orders, the respondent has referred to the Form WW, it will be a fit case where the petitioner could be granted one more opportunity to appear before the Assessing Officer. However, this opportunity shall be granted subject to conditions.

9. Accordingly, the Writ Petitions are disposed of by directing the petitioner to pay 15% of the tax assessed in both the impugned Assessment Orders within a period of three weeks from the date of receipt of a copy of this order. If the payment as directed above is made, within the time permitted, the petitioner will be entitled to treat the impugned Assessment Orders as Show-Cause Notices and the petitioner shall file their objections within a period of 15 days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and proceed to re-do the Assessments in accordance with law. However, if the petitioner fails to effect the payment as directed, the benefit of this order will not enure to the petitioner and the Writ Petitions shall stand automatically dismissed, leaving it open to the petitioner to work out their remedies under the Provisions of the Act. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Periya Agraharam Circle,
Erode.

+1cc to Mr.S.Raveekumar, Advocate Sr.42295
+1cc to the Special Government Pleader Sr.41923

W.P.Nos.25557 & 25558 of 2016 &
W.M.P.Nos.21929 & 21930 of 2016

rsy[co]
srg 16/08/2016