IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26090 to 26096 of 2016
&
W.M.P.Nos.22368 to 22374 of 2016

M/s T.Abdul Wahid & Co.,
rep. by its Partner Mr.H.Mahmood Akthar
Chennai. ... Petitioner in all WPs

Vs

1. The Assistant Commissioner (CT) Main
   Vepery Assessment Circle
   No.5, Ritherdon Avenue,
   Chennai 600 007.

2. The Assistant Commissioner (CT) FAC
   Vepery Assessment Circle
   No.10, Greams Road, PAPJM Buildings
   Chennai 600 006. ... Respondents in all WPs

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the first respondent in TIN:3328 0520100/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14 dated 28.07.2014, quash the same as erroneous, arbitrary, unreasonable being ultravires of provisions of the Tamilnadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.S.Manokaran Sundaram
Additional Government Pleader

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C O M M O N   O R D E R

Heard Mr.Mr.V.Sundareswaran, learned Counsel appearing for the petitioner and Mr.S.Manokaran Sundaram, learned Additional Government Pleader accepting notice on behalf of the respondents and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

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2.The petitioner who is a registered dealer under the provisions of Tamil Nadu Value Added Tax, 2006 [TNVAT Act], has filed these Writ Petitions challenging the orders of assessment dated 28.07.2014 for the assessment years 2007-08 to 2013-14 (seven years), by which the first respondent confirmed the proposal made in the notice dated 02.05.2014, on the ground that though the petitioner requested for two months time to submit their objections by their letter dated 14.05.2014, they have not submitted their objections.

3.In the notice dated 02.05.2014, the common issue arising for all the seven assessment years is with regard to the cross verification of buyer and seller annexure. The first respondent by relying upon the report of the Enforcement Wing which conducted an inspection on the petitioner's place of business on 18.11.2013 and pursuant to the VAT Audit conducted, during which time the records of the petitioner were verified, stated that on cross verification of Departmental Website, there is a difference of turnover reported in the Annexure-I of the Seller and Buyer for the relevant assessment years. Therefore, the first respondent proposed to levy tax on the difference in turnover.

4.Admittedly, the petitioner did not submit their objections within the time stipulated in the notice nor they sought for further adjournment. However, it is not clear as to whether the respondents have issued any notice to the petitioner pursuant to their representation dated 14.05.2014, seeking two months time to submit objections and as to whether the respondents fixed a date within which the objections should be filed.

5.Be that as it may, the petitioner submitted their objections on 04.08.2014, stating that they are unable to submit an effective reply/objection, since details were not furnished in the impugned notice. This Court pointed out to the learned counsel for the petitioner that apart from the issue relating to the cross verification of the buyer and seller annexure, there are other issues in respect of which all the assessment orders under the Heads viz. Sale of Assets; TDS not deducted; Reversal of ITC on loss in manufacturing/ processing and handling; Sale of Rubber Sheets; Purchases effected from the registration cancelled dealers and Stock variation.

6.On such query being posed, the learned counsel for the petitioner on instructions submitted that in these writ petitions, the petitioner is challenging only the assessments which have been made pursuant to the cross verification of buyer and seller annexure and in respect of all other issues, the petitioner will agitate the matter before the Appellate Authority. This submission is placed on record.

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7.On a perusal of the impugned orders, it is seen that the first respondent has only stated that there is a difference in turnover reported in the Annexure-I by the seller and buyer for the relevant assessment years, however, the details pertaining with regard to the particulars that who are all dealers and who are all sellers, have not been mentioned. Their TIN Numbers have also not been furnished to them and this defect has put the petitioner in a disadvantageous position, as they are not able to effectively submit their objections.

8.Though the petitioner had not submitted their objections within the time stipulated, this Court is of the view that since notice dated 02.05.2014, itself was defective under the said heading viz. cross verification of buyer and seller annexure, this Court is inclined to remit the matter to the respondents for fresh consideration, only with regard to the said issue.

9.Accordingly, the Writ Petitions are partly allowed and the impugned orders are quashed only with regard to the finding rendered by the first respondent under the head "cross verification of buyer and seller annexure" and the respondents are directed to furnish details which they have verified from the Departmental Website and after the details are furnished to the petitioner, the petitioner is directed to submit their objections, within a period of fifteen days from the date of receipt of the complete details and on receipt of the objections, the respondents shall redo the assessment, after affording an opportunity of personal hearing and pass fresh orders on the said issue. As observed earlier, with regard to the other issues in all the seven assessment orders, it is open to the petitioner to invoke the remedies available to them under the Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CCC)

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//True Copy//

Sub Assistant Registrar

rpa

To

1. The Assistant Commissioner (CT) Main
   Vepery Assessment Circle
   No.5, Ritherdon Avenue,
   Chennai 600 007.

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2. The Assistant Commissioner (CT) FAC
   Vepery Assessment Circle
   No.10, Greams Road, PAPJM Buildings
   Chennai 600 006.

3. The Sub Assistant Registrar(Writ Sec.),
   High Court, Madras.

4. The Section Officer,
   Current Section,
   High Court, Madras 104.
   (Reg. return of Original
   Impugned Order)

+1cc to M/s.V.Sundareswaran, Advocate, S.R.No.42817
+1cc to the Special Government Pleader(T), S.R.No.42595

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RSK(CO)
CA(28/07/2016)

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