IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26119 to 26127 of 2016
&
W.M.P.Nos.22382 to 22390 of 2016

W.P.Nos.26119 to 26127 of 2016

M/s Literoof Housing Limited
rep. by its Managing Director
Mr.M.Mohammed Ansari ...Petitioner in all WPs

Vs

The Commercial Tax Officer
Royapettah Assessment Circle
46, Greenways Raod, Chennai 28. ...Respondent 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 respondent in TIN/33970721529/2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 & 2014-2015 respectively dated 15.06.2016, and quash the same.

For Petitioner : Mr.R.Kumar

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

COMMON ORDER

Heard Mr.R.Kumar, 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.

2.The petitioner who is a registered dealer under the provisions of Tamil Nadu Value Added Tax, 2006 [TNVAT Act] and also under the provisions of Central Sales Tax Act, 1956 [CST Act] has filed these Writ Petitions, challenging the orders of assessment dated 15.06.2016, which are purported to be the assessment orders for the years from 2006-07 to 2014-15.

3.The respondent issued notices to the petitioner on 12.3.2015, for all the assessment orders, based on the inspection conducted by the Officers of the Enforcement Wing, wherein they had reported certain defects. Referring to the said report and without furnishing copy of the same, the respondent has stated that at the time of surprise inspection, the Enforcement Wing has pointed out the variations in respect of Annexure-I of the buyer and Annexure-II of the seller. Pointing out the same, the petitioner was called upon to produce the break up details for figures mentioned in the respective invoices. The petitioner was granted fifteen days time to file their objections. In certain invoices, apart from the defects under the head "cross verification" for certain assessment years, the notices also refers to Reversal of ITC on purchases effected by Registration Cancelled Dealers, Reversal of ITC on the sale effected to the dealers who are doing contract in SEZ unit, Tax liability on sale of Pavers and Sale of Asset (Car Sale).

4.The petitioner submitted their objections to the nine notices on 31.3.2015. In the objections, after referring to the decision of this Court, in the case of SRI VINAYAGA AGENCIES v. ASSISTANT COMMISSIONER (CT) [(2013) 60 VST 283], the petitioner stated that selling dealers might have paid the tax well in advance and merely because there are some differences on the reported turnover of the selling dealers and purchases reported by the petitioner, it cannot be construed that the selling dealers have not paid tax to the Department. Reliance was also placed on the same decision (SRI VINAYAGA AGENCIES),for the contention that the respondent is not empowered to revise the Input Tax Credit availed, on a plea that the selling dealer has not paid the tax.

5.Further, the petitioner pointed out that the respondent did not give any proof that the petitioner's selling dealers have not remitted the tax collected from them and even if there is any failure on their part for non remittance of tax cleared from the petitioner, the liability has to be fastened to the selling dealer and not on the part of the petitioner in terms of such Judgment. Along with the objections, the petitioner enclosed the Purchase Register for the assessment years 2006-07 to 2014-15 upto July, 2014 for reference. The petitioner enclosed parawise breakup details of Annexure II of the Sellers for all the nine assessment years. After receiving those details, the respondent issued separate notices, proposing to levy penalty under section 27(4) of the Act.

6.The respondent proceeded to complete the assessment and passed the impugned orders, wherein the respondent has referred to the petitioner's objection dated 31.03.2015 and the letter dated 27.01.2016 in reference column in the impugned orders.

7.However, on a careful reading of the impugned orders, it is seen that there is absolutely no discussion as regards the objections raised by the petitioner. All that the respondent has done was, merely by referring to the decision of the Karnataka High Court in the case of KARNATAKA AND ANOTHER v. MANGALORE STEELS & CEMENTS [8 VST 198] and the decision in the case of USA AGENCIES v. THE COMMERCIAL TAX OFFICER [W.P.NOs. 902, 1202 of 2009. etc batch dated 17.07.2013] and passed the impugned orders. The respondent ought to have considered the petitioner's objections and examined as to whether the case as projected by the petitioner was correct, what would be the effect of the break up details furnished by the petitioner along with their letter on 27.01.2013, which were in fact called for by the respondent in the notice dated 12.03.2015. Thus, the respondent has misdirected himself and the manner in which the impugned assessment orders have been passed, are untenable.

8.In the light of the above, the Writ Petitions are allowed, the impugned orders are quashed and the respondent is directed to take into consideration the objections given by the petitioner dated 31.03.2015, the decision of this Court which has been relied on by the petitioner viz. SRI VINAYAGA AGENCIES, the purchase registers which were furnished to the respondent along with the objections, the party-wise breakup details given by the petitioner and after considering all the aspects and after affording an opportunity of personal hearing to the petitioner, proceed to complete the assessment without in any manner being influenced by the report submitted by the Enforcement Wing. This observation is made to remind the respondent that he is an Assessing Officer, an independent authority and the Statute mandates that the authority should apply his mind and act accordingly, failing which it would amount to abdication of his statutory powers. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

rpa Sub Assistant Registrar

To

The Commercial Tax Officer
Royapettah Assessment Circle
46, Greenways Raod, Chennai 28.

+1cc to Mr.K.Kumar, Advocate, S.R.No.42517
+1cc to the Special Government Pleader(T), S.R.No.42597

W.P.Nos.26119 to 26127 of 2016

MP 1(CO)
CA(17/08/2016)