IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.27628 to 27633 of 2016 (six cases)
and
W.M.P.Nos.23803 to 23808 of 2016

W.P.No.27628 of 2016 to WP.No.27633/16:

M/s. Sri Gayathri Enterprises,
rep. by S.Mukesh Kumar
Managing Director,
2/132, Jagir Reddipatty, Salem....Petitioner in all WPs

Vs.

The Assistant Commissioner (CT)
Suramangalam Circle,
Salem. ...Respondent in all WPs

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records from the files of the respondent in TIN No.33162802382/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 dated 01.06.2016, received on 25.06.2016, and to quash the same as being contrary to the direction issued by this Court in W.P.Nos.23358 - 23363 of 2014, dated 28.08.2014, and the principles laid down in the case of (Interfit Techno Products Ltd., Vs. Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another) reported in (2015) 81 VST 389.

In all W.Ps.

For Petitioner : Mr.V.Srikanth for
for C.Venkatraman

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Since the issue involved in these Writ Petitions is identical in nature, and the parties are one and the same, these Writ Petitions have been taken up together, and disposed of by this common order.

2. Heard Mr.Mr.V.Srikanth, for Mr.C.Venkatraman, learned

counsel appearing for the petitioner, and Mr.S.Kanmani Annamalai and learned counsel accepting notice for the respondent. With the consent on either side, the Writ Petitions are taken up for final disposal.

3. The petitioner is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT' Act), and they have challenged the orders of assessment made under the TNVAT Act, for the years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13.

4. The petitioner has challenged the impugned orders primarily on two grounds. Firstly, by contending that, inpite of specific request made by the petitioner, for grant of personal hearing, in their objection, dated 06.09.2014, the respondent, without affording such opportunity, has finalized the assessment for the relevant years. Secondly, it is contended that, with regard to the assessment, pertaining to 'Invisible Loss', it is submitted that the same has been done in an ad hoc manner, which was not approved by this Court, in the case of (Interfit Techno Products Ltd., Vs. Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another) reported in 2015 81 VST 389 (Madras).

5. I have heard the learned Additional Government Pleader, on the above submissions.

6. On a perusal of the objections filed by the petitioner, dated 06.09.2014 to the pre assessment notices, it is seen that, in all the objection, the petitioner has specifically pleaded to grant an opportunity of personal hearing. That apart, in the objections, the petitioner submitted that, if the Assessing Officer requires for any additional materials, or information, opportunity may be given to them for providing the same before final orders have been passed. When such request has been made by the dealer, the Authority ought to have afforded an opportunity of personal hearing to the dealer/petitioner. In fact, this Court has held in several decisions that, when factual issues are involved, opportunity of personal hearing should be granted, so as to enable the Assessing Officer to come to a proper conclusion after perusing the documents placed by the dealer. Therefore, failure to afford opportunity of personal hearing, in spite of specific request made by the petitioner, would amount to violation of principles of natural justice.

7. On the second issue, as to how to determine the 'Invisible Loss' came up for consideration before me, in the case of Interfit Techno Products (referred supra) wherein, the dealers challenged the orders of assessment on the ground that

ad hoc estimation has been done, and in certain cases, uniform percentage for invisible loss was challenged and the dealers were called upon to reverse the input tax credit availed to that extent. This was deprecated by this Court, and it was held that the Assessing Officers are not justified in adopting uniform percentage as invisible loss, and calling upon the dealer to reverse the input tax credit availed to that extent. Therefore, the impugned notices therein for re-opening, and the consequential orders passed by the respective Assessing Officer, reversing the input tax credit to the extent of either four percent, or five percent, or on ad hoc percentage were set aside, and liberty was granted to the concerned Assessing Officer to issue show cause notices, setting out, under what circumstances they propose to reverse the ITC and after considering the objection, to proceed in accordance with law. It was further pointed out in the said decision that, it is essential for the Assessing Officer to embark upon the fact finding exercise to ascertain the quantum of loss of the goods, which were purchased, on which, tax was paid, vis-a-vis the goods manufactured from and out of the goods purchased, and to examine as to whether they fall within any of the restrictions contained in Section 19 of the TNVAT Act.

8. In the instant cases, for all the assessment years, the Assessing Officer had adopted uniform percentage of manufacturing loss at 3%, and this could not have been done, without examining the manufacturing process done by the petitioner. Hence, on both grounds, the impugned orders are liable to be set aside.

9. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside, and the matters are remanded to the respondent for fresh consideration, who shall cause inspection of the petitioner's Factory and ascertain the manufacturing process, and during the course of such inspection, the petitioner is directed to furnish details of the manufacturing process, and thereafter, the respondent shall ascertain as to the quantum of manufacturing loss and issue necessary supplementary show cause notices to the petitioner, and after considering the objections filed, and after affording opportunity of personal hearing, the respondent is directed to redo the assessment in accordance with law.

10. In the result, the Writ Petitions are allowed, as stated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT)
Suramangalam Circle,
Salem.

+1 cc to Spl.Govt.Pleader, sr.45053

+1 cc to Mr.C.Venkatraman, advocate,sr.44800.

svi(co)
krd 23/8

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(six cases)