In the High Court of Judicature at Madras

Dated : 18.8.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.28809 to 28814 of 2016
& WMP.Nos.24862 to 24873 of 2016

M/s.Same Deutz-Fahr India Pvt.Ltd.,
rep.by its Constituted Attorney/
Authorized Signatory S.Tamilselvan
72M, Sipcot Industrial Complex,
Sipcot, Ranipet , Vellore District. ...Petitioner in all the WPs

Vs

1.The Assistant Commissioner (CT)
(FAC), (SIPCOT) Assessment Circle,
Raniept (SIPCOT), Vellore District.

2.The Appellate Deputy Commissioner
(CT), Commercial Taxes Building,
Vellore, Vellore District. ... Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the file of the second respondent in its impugned orders passed respectively in Appeal No. & year : 642/15 to 647/15 dated 20.5.2016 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar
For Respondents : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for final disposal.

2. In these writ petitions, the petitioner has challenged the orders passed by the Appellate Authority namely the second respondent herein in respect of the appeals filed by the petitioner against the orders of assessment for the years 2008-09 to 2013-14 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. Under normal circumstances, this Court would not have entertained the writ petitions, since, as against the impugned orders, the petitioner has an effective alternate remedy of preferring an appeal before the Sales Tax Appellate Tribunal. However, this Court has entertained these writ petitions and proceeded to grant relief to the petitioner for the following reasons :

4. The petitioner preferred appeals raising various contentions on the ground that the Assessing Officer, without giving any details for the alleged disallowance transaction, disallowed the input tax credit, which, according to the petitioner, is in violation of the principles of natural justice. Further, the name of the supplier, invoice number and date, tax payer identification number of the supplier, commodity code, tax claim portion and sale value should have been provided by the Assessing Officer so as to enable the petitioner to rebut the claim. Since these details were not made available to the petitioner, it is contended that the assessments themselves are not sustainable.

5. Apart from the above, various other factual grounds were raised and certain decisions of this Court in the case of Althaf Shoes (P) Ltd. Vs. Assistant Commissioner, Valluvarkottam Circle [50 VST 179] and Sri Vinayaga Agencies Vs. Assistant Commissioner, Vadapalani [60 VST 283] were relied upon. In fact, the Appellate Authority extracted the entire grounds of appeal raised by the petitioner, which shows that elaborate contentions were advanced by the petitioner before the Appellate Authority. Thus, the Appellate Authority was expected to consider the grounds of appeal and then take a decision on merits and in accordance with law.

6. However, I find from page 8 of the impugned orders that the Appellate Authority was thoroughly dissatisfied with the manner, in which, the files were maintained by the Assessing Officer. In fact, he has heavily commented upon the contents of the assessment files. This observation by the Appellate Authority is not only made in one place, but in more than three places in the impugned orders. Thus, the Appellate Authority has come to the conclusion that the assessment files made available to him did not contain full and correct particulars. Further, the Appellate Authority noted that the Assessing Officer failed to verify and ensure the correctness of disallowance of input tax credit.

7. In addition to that, the assessment files did not show any evidence of sales falling under Section 18(1) of the said Act. If such is the finding recorded by the Appellate Authority, naturally the consequence that ought to have followed is to remand the matter to the Assessing Officer with pointed

directions. Unfortunately, the Appellate Authority misdirected herself and proceeded to reject the petitioner's appeals, based on those incomplete and incorrect file particulars. If the Appellate Authority found that the assessment files were incomplete and did not contain full and correct details, she could have called for a report from the Assessing Officer to explain as regards the missing details. However, such exercise was also not done by the Appellate Authority and she proceeded to arbitrarily reject the appeals. However, one redeeming feature is that the appeals as against the levy of penalty under Section 27(3) of the said Act have been set aside and to that extent, the Appellate Authority was correct in doing so.

8. In the light of the above, this Court is of the view that the assessments should be redone, for which purpose, this Court deems it appropriate to send back the matters to the Assessing Officer.

9. Accordingly, the writ petitions are allowed and the impugned orders are set aside except the portion that the Appellate Authority granted relief to the petitioner from the levy of penalty. In all other aspects, the Assessing Officer is directed to redo the assessment after providing all the details sought for by the petitioner, grant reasonable time to submit their objections and complete the assessments after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, the above WMPs are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Assistant Commissioner (CT) (FAC), (SIPCOT) Assessment Circle,Raniept (SIPCOT), Vellore District.

2.The Appellate Deputy Commissioner (CT), Commercial Taxes Building, Vellore, Vellore District.

+ 1 cc to Spl. Govt.Pleder (T) SR 47260

+ 6 ccs to Mr.S.Rajasekar, Advocate SR 47079

pvs(co)
prk2/9

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