IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28883 to 28889 of 2016 and

WMP Nos.24954 to 24960 of 2016

Tvl. Fineware Leathers Pvt., Ltd.
Represented by its Managing Director
A.Kabilan,
No.8, Vadivel Street,
West Tambaram,
Chennai - 600 045 ... Petitioner in All WP's

-vs-

The Assistant Commissioner (CT)
Tambaram Assessment Circle,
Chennai - 45 ... Respondent in All WP's

Prayer in W.P.No.28883 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN 33260884928/2007-08 2008-2009, 2009-2010 2010-2011, 2011-2012, 2012-13, 2013-14 dated 26.05.2016 WP.No.28881/16 dated 26.05.2016, WP.NO.28885/16 dated 29.01.2016, WP.No.28887/16 dated 26.05.2016, WP.No.28888/16 dated 29.01.2016, WP.No.28889/16 dated 29.01.2016 respectively pending disposal of the above Writ Petitions and quash the same as being without jurisdication and authority of law.

For Petitioner : Mr.R.Senniappan
For Respondent : Ms.Vasudha Thiagarajan
Additional Government Pleader

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Ms.Vasudha Thiagarajan, learned Additional Government Pleader appearing for the respondent. With consent on either side, the Writ Petitions are taken up for final disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act (herein after referred to as: TNVAT Act) and in these Writ Petitions, the petitioner has challenged the orders of assessment passed under TNVAT Act dated 26.05.2016 for the assessment years 2007-2008 to 2013-2014. The impugned orders are revision of assessment, pursuant to audit conducted under Section 64 of the Act by the Enforcement Wing Officers in the place of business of the petitioner's on 28.05.2015.

3. Though the learned counsel appearing for the petitioner questioned the impugned assessment orders on the merits of the assessment, the first submission that counsel would make is that the petitioner was unable to submit their objections to the pre-revision notice dated 20.01.2016, as their business premises were fully flooded during the rain in November 2015 and it took more than two months to retrieve the records, therefore, it is submitted that if one more opportunity is granted to the petitioner, they will be in a position to demonstrate before the Assessing Authority that the proposed revision of assessment is not called for.

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

5. Admittedly, the assessment proceedings have been completed ex parte. However, the assessment officer cannot be blamed for the same, as the petitioner did not file the objection in time. Though pre-revision notice was served on them on 29.01.2016, taking into consideration of the fact that the petitioner pleaded one more opportunity, this Court is of the view that opportunity could be granted subject to certain conditions.

6. Accordingly, the petitioner is directed to pay 15% of the disputed tax for each of the assessment years within a period of four weeks from the date of receipt of copy of this order. If the same is remitted, then, the petitioner is entitled to treat the impugned assessment orders as show cause notice and submit

their objections within a period of fifteen days there from. On receipt of the objection, the respondent shall afford opportunity of personal hearing and redo the assessment in accordance with law, after considering the objection raised by the petitioner and also taking note of the submission that the petitioner may make during the course of personal hearing.

7. However, if the petitioner fails to deposit the 15% of the disputed tax for each of the assessment years, within the time permitted the benefit of this order will not enure to the petitioner and the Writ Petitions would stand automatically dismissed leaving it open to the petitioner to work out their remedies under the provisions of the TNVAT Act. Needless to state that if the petitioner complies with the condition, then, he is entitled to treat the impugned proceedings, as show cause notice.

8. Therefore, the respondent cannot enforce the demands made in the impugned assessment orders till fresh orders are passed in terms of the above direction.

9. With the above observation, these Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

To

The Assistant Commissioner (CT)
Tambaram Assessment Circle,
Chennai - 45

+1 cc to Mr.R.Senniappan Advocate sr 47365
+1 cc to Special Government Pleader Taxes sr 47589

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