IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.30253 and 30254 of 2016 &
W.M.P.Nos.26241 and 26242 of 2016

M/s. Salem Hardwares,
Rep. by its Managing Partner,
No.83C Arcot Road, Alwarthirunagar,
Chennai - 600 087. .. Petitioner in both WPs.

Versus

The Assistant Commissioner (CT) (FAC),
Porur Assessment Circle,
No.65/1, Kundrathur, Main Road,
Madanapuram,
Chennai - 600 125. .. Respondent in both WPs.

Prayers: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for records of the respondent in his proceedings in TIN:33941680612/2008-09 and 33941380612/2013-14, respectively, and quash the assessment orders dated 26.07.2016 and 19.07.2016 respectively, made therein in so far as it relates to levy of tax and penalty on stock variation.

For Petitioner : Mr.P.Rajkumar (in both WPs.)

For Respondent : Mr.S.Kanmani Annamalai, AGP,
(in both WPs.)

COMMON ORDER

Heard P.Rajkumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent. By consent of the learned Counsel appearing for both sides, the Writ Petitions themselves are taken up for final disposal.

2) The petitioner is a dealer in hardware and registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act).

3) In these writ petitions, the petitioner has challenged the assessment orders dated 26.07.2016 and 19.07.2016 for the assessment years 2008-09 and 2013-14. This is the second time the petitioner has approached this court misdirecting certain grievances in the manner in which the assessments were completed. Earlier, the Writ Petition Nos. 10693 and 10694 of 2014 were disposed of by a common order dated 15.04.2014, and the operative portion of the order reads as follows:

> ".....8. In the result, these Writ Petitions are allowed and the impugned orders of the respondent, dated 28.02.2014, are set aside. These matters are remitted back to the respondent to decide the matter afresh. It is further directed that if the respondent needs any other document, he shall inform the same to the petitioner within fifteen days from today, so as to enable the petitioner to produce the same. The petitioner also without waiting for any further notice or without waiting for the order copy, shall pay 15% of the tax amount, which is claimed by the respondent in the impugned order dated 28.02.2014 in respect of the assessment year 2007-08 and 2008-09, directly to the respondent on or before 30.04.2014 and he shall also pay 10% of the tax amount, which is claimed by the respondent in the impugned order dated 28.02.2014 in respect of the assessment years 2007-08 and 2008-09, directly to the respondent on or before 31.05.2014 and in the meanwhile, the petitioner shall also appear before the respondent for the personal hearing on 07.05.2014 along with the objections, both for levy of tax as well as for penalty, along with documents, if any, in his custody pertaining to the assessment years 2007-08 and 2008-09. The petitioner is further directed to co-operate with the respondent in production of further documents, if any and conclude the enquiry. Thereafter, the respondent shall consider decide these matters afresh and pass orders, on merits and in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petitions are closed. No costs."

4) After the above writ petitions were disposed of, the petitioner submitted a representation on 23.05.2014, wherein the petitioner has sought for certain documents and details to enable them to submit it before the Assessing officer, which have been required by the petitioner based on the observations made by this court in the earlier writ petitions. However, the

respondents completed the assessment without furnishing the documents.

5) When the present writ petitions came up for admission on 31.08.2016, this court passed the following order:

> "The petitioner's case is that they have given a representation on 23.05.2015, that is, after the disposal of the earlier Writ Petition filed by the petitioner and in the said representation, the petitioner requested for certain documents. However, the Assessing Officer, without reference to the said representation, dated 23.05.2015, and without furnishing documents, has completed the assessment.
>
> Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice for the respondent and seeks time to obtain instructions in this regard.
>
> List the case on 02.09.2016, at the end of the motion list. Registry is directed to print the name of the learned Additional Government Pleader, who accepts notice for the respondent."

6) Pursuant to the above order, learned Additional Government Pleader got instructions and stated that the present assessing officer has joined duty only on 01.08.2016 and she is ready and willing to re-do the assessment, after furnishing the documents sought for by the petitioner.

7) In the light of the above, writ petitions are allowed. The impugned assessment orders are set aside. The matter is remanded to the respondent for fresh consideration, who shall consider the earlier representation dated 23.05.2014 and furnish the documents which the petitioner has sought for and thereafter grant 15 days time to the petitioner to submit the objections and on receipt of the objections, opportunity of personal hearing shall be granted and the assessment be re-done in accordance with law, and if assessing Officer has any doubt as to what is the nature of the documents the petitioner wants, then she is entitled to direct him to appear before her to furnish the list of such documents. No cots. Consequently, connected W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

PVS

To

The Assistant Commissioner (CT) (FAC),
Porur Assessment Circle,
No.65/1, Kundrathur, Main Road,
Madanapuram,
Chennai - 600 125.

1 cc to Mr.P.Rajkumar, Advocate, sr.30254
1 cc to The Special Government Pleader,(Taxes), sr.50296

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