IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.29733 & 32172 of 2013
and
M.P.Nos.1 & 1 of 2013

W.P.No.29733/2013

M/s.Kevin Power Tech (P) Ltd.,
Rep by its Authorised Signatory
P.Krishnan
Krishna Nagar Extension
Tolgate, Vellore - 1
Now at Ground Floor House
Plot No.74, Kasi Estate, Jabarkhanpet
Chennai - 600 095. .. Petitioner

..Vs..

1.The Assistant Commissioner (CT) (FAC)
Vellore (Rural) Assessment Circle, Vellore.

2.The Special Commissioner and Commissioner
of Commercial Taxes, Ezhilagam, Chepauk
Chennai - 600 0005. .. Respondents

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN.33284324731/2012-13 and quash the impugned order dated 31.07.2013.

W.P.No.32172/2013

Tvl.Sparta Plasticizers
Rep by its Proprietor
M.Mohamed Ismail
No.232/8, 5th Cross Street
Lakshmi Nagar Extension
Porur, Chennai - 600 116. .. Petitioner

..Vs..

The Assistant Commissioner (CT)
Porur Assessment Circle
No.3, Alwar Thirunagar
Chennai - 600 087 .. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the impugned proceedings of the respondent passed in TIN/33531390974/2012-13 dated 17.10.2013 and to quash the same.

For Petitioner
in WP 29773/13 : Mr.V.Sundareswaran

WP 32172/2013 : Mr.N.Murali

For Respondents
in both the WPs : Mr.Manokaran Sundaram, A.G.P.,

COMMON ORDER

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.Manokaran Sundaram , learned Additional Government Pleader appearing for the respondents and with the consent of either side, these writ petitions are taken up for final disposal.

2.The petitioners who are the registered dealers under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and Central Sales Tax Act, 1956 [CST Act] have filed these writ petitions challenging the impugned orders of assessment for the year 2012-13. At the time, when the writ petition in W.P.No.32172 of 2013 was entertained, this Court by order dated 28.11.2013 while granting interim order had recorded the following reasons:

> "This writ petition is directed against the assessment order dated 17.10.2013. The challenge is primarily on the ground that even before the expiry of statutory period prescribed for furnishing a report in Form-ww, the assessment was completed by reversing the input credit.
>
> 2.Section 63-A of the Tamil Nadu Value Added Tax Act provides for submission of Form-ww within seven months from the end of the year in duplicate. The assessment in question relates to the year 2012-2013.

Therefore, the petitioner is having time till 31.10.2013 to submit the report in Form-ww. Subsequently, the time was extended up to 31.12.2013. Even before the expiry of the said period, the assessing officer passed the assessment order on 17.10.2013. Therefore, I am of the view that the petitioner has made out a prima facie case.

3.Mr.Kanmani Annamalai, learned Additional Government Pleader (Tax) takes notice and seeks time to take instructions.

4.Post on 19.12.2013 along with connected W.P.No.29733 of 2013.

5.There shall be an order of interim stay of all further proceedings pursuant to the impugned order in the mean time."

3.The contention raised by the petitioner that has been recorded by this Court in the aforesaid order cannot be disputed by the learned Additional Government Pleader as that being the statutory position. In terms of Section 63-A of Tamil Nadu Value Added Tax Act, the petitioner/dealer whose turn over has crossed Rupees One Crore is required to submit Form-ww within a period of seven months from the end of the year in duplicate. The period of seven months would come to end only on 31.10.2013, but even prior to that the impugned order of assessment was passed on 17.10.2013.

4.That apart, the time limit which was prescribed as seven months was extended to nine months i.e., 31.12.2013 and the petitioner has filed the Form-WW, after the impugned order has been passed. Therefore, the impugned orders of assessment are unsustainable in law.

5.Accordingly, these writ petitions are allowed and the impugned orders are quashed. The respondents are directed to take into consideration the Form-WW filed by the petitioner and proceed to complete the assessment, after affording an opportunity of personal hearing to the petitioner.

6.Further, since the learned counsel appearing for the petitioners do not have clear instructions as to whether the petitioners have already filed the Form-WW, even assuming that it has not been filed, it can very well be filed before the respondent and the petitioners would be required to pay the penalty. Therefore, the respondents shall permit the petitioner to file the Form-WW along with the penalty, if not already filed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT) (FAC)
Vellore (Rural) Assessment Circle, Vellore.

2.The Special Commissioner and Commissioner
of Commercial Taxes, Ezhilagam, Chepauk
Chennai - 600 0005.

3.The Assistant Commissioner (CT)
Porur Assessment Circle
No.3, Alwar Thirunagar
Chennai - 600 087.

1 cc to The Special Government Pleader(Taxes), sr.38953
1 cc to Mr.V.Sundareswaran, Advocate, sr.38882
1 cc to Mr.N.Murali, Advocate, sr.39973

W.P.Nos.29733 & 32172 of 2013
and
M.P.Nos.1 & 1 of 2013

pa co
kra 01.08.2016