IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2016

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

WP. Nos. 31724 & 31725 of 2016 and
WMP. Nos. 27534 & 27535 of 2016

Subham Traders,
Rep by its Proprietrix
K. Rajini Devi,
No.187/32-B, Deivanayagam Street,
Shevapet, Salem-636 002. ... Petitioner in both WPs

Vs

The Assistant Commissioner (CT),
Gugai Assessment Circle,
Salem. ... Respondent in both WPs

Prayer: These petitions are filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to calling for the records on the file of the respondent herein in TIN. No.33152723478/2012-13, dated 18.07.2016, and TIN. No. 33152723478/2013-14, dated 12.07.2016 and quash the same, while directing the respondent herein to consider the Petitions under section 84 of the Act dated 10.08.2016 and 23.07.2016, served on the respondent on 16.08.2016 and 26.07.2016 respectively.

For Petitioner in
both Writ Petitions: Mr. N.Inbarajan

For Respondent in
both Writ Petitions: Mr.K.Venkatesh,
Government Advocate.(T)

COMMON ORDER

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner in both Writ Petitions and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of respondent in both Writ Petitions. With the consent of the learned counsel on either side, these Writ Petitions are taken up for disposal.

2. The petitioner has filed these Writ petitions challenging the orders dated 18.07.2016 and 12.07.2016 passed by the respondent and seeks for consequential direction to direct the respondent to consider their Petitions dated 10.08.2016 and 23.07.2016, filed under section 84 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred as "the TNVAT Act").

3. The petitioner is a registered dealer on the file of the respondent under the provisions of TNVAT Act and they are carrying on business in Appalam and Sago & Starch. The petitioner claimed exemption in their returns for the Assessment year 2013-14, on the sale of appalams and accordingly the Assessments were deemed to have been completed for the Assessment year 2013-14.

4. While so, based on the Internet website on an other-end dealers, sales details in annexure II and on verification of the same with Annexure I of the petitioner, notices were issued to the petitioner on 29.02.2016 for the years 2012-13, 2013-14 proposing to reopen the Assessments. The petitioner did not respond to the notices stating that the mother-in-law of the petitioner, who is the Proprietrix of the firm was suffering from cancer and was undergoing treatment and died on 08.06.2016.

5. The respondent has granted an opportunity for personal hearing on two dates i.e, 30.05.2016 and 16.06.2016 in which the Tax Consultant appeared and requested for adjournment till 31.07.2016. The impugned order for the Assessment year 2012-2013 came to be passed on 18.07.2016 and for the Assessment year 2013-14 passed on 12.07.2016, stating that no objections have been filed and the proposal in the notice dated 29.02.2016 was confirmed.

6. The learned counsel for the petitioner would admit that the petitioner did not avail the opportunity provided to them, but would state that, that was on account of a circumstances beyond the control of the petitioner. It is also submitted that the petitioner has all the details and would be able to convince the Assessing Officer that the Assessments do not required to be reopened. Therefore, the petitioner has filed Petitions for rectification of the orders of Assessments, by Applications, dated 23.07.2016, which was sent by Speed Post and received by the Office of the respondent on 16.08.2016 and 27.07.2016 respectively, as could be seen from the Postal Acknowledgement cards.

7. The learned Government Advocate submitted that the petitioner having failed to avail the opportunity granted to them, cannot now approach this Court and complain that the

Assessing Officer did not afford adequate opportunity. The learned Government Advocate is fully justified in such submission, because, admittedly, the petitioner did not file their objection and did not utilise the opportunity of personal hearing granted to them.

8. Nevertheless, the petitioner has a right to file Petitions under Section 84 of the TNVAT Act. According to the petitioner, they are not manufacturers. Therefore, the question of purchase of dhal and sago does not arise and further pappad falls under Commodity Code 704 of IV Schedule of the TNVAT Act, 2006 and is exempted from tax. Therefore, the Assessment at 5% under Section 12 of the TNVAT Act is incorrect.

9. With respect to purchase difference and non-filing of Form WW, the petitioner has raised certain contentions in the said representation, dated 23.07.2016. In the light of the fact that the Petitions filed under Section 84 of TNVAT Act, for both the Assessment orders are pending before the respondent, it would be appropriate for the respondent to dispose of the same on merits and accordance with law.

10. Accordingly, there will be a direction to consider and dispose of the petitioner's Petitions dated 10.08.2016 and 23.07.2016, subject to the condition that the petitioner deposits 15% of disputed tax for the each of the Assessment years. On such remittance, no coercive action shall be initiated against the petitioner and the respondent shall hear the petitioner in person and pass a speaking order on the Petitions filed under Section 84 of TNVAT Act. The petitioner is directed to pay the 15% of the disputed tax within a period of three weeks from the date of receipt of the order.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

r t s / r n s

To

The Assistant Commissioner (CT),
Gugai Assessment Circle,
Salem.

2 ccs to Mr.N.Inbarajan, Advocate, sr.51586
1 cc to The Special Government Pleader(Taxes), sr.51790

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kk co
kra 28.09.2016