IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.32263 to 32265 & 32384 of 2016 &
connected W.M.Ps.

Senthil Traders
rep. by its Proprietor .. Petitioner in W.P.Nos.32263 to 32265 of 2016

Senthil Pipe Corporation
rep. by its Proprietor .. Petitioner in W.P.No.32384 of 2016

..Vs..

The Commercial Tax Officer
Mayiladuthurai-II
Mayiladuthurai.
.. Respondent in all W.Ps.

Common Prayer W.P.Nos.32263 to 32265 of 2016

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the entire records of the respondent in TIN Nos.:33984060603, 33314061408, 33114060451/2013-14 dated 01.08.2016 and quash the orders passed therein.

Prayer in WP.No.32384 of 2016

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the entire records of the respondent in TIN No.33354060416/2013-14 dated 02.08.2016 and quash the order passed therein.

For Petitioner : Mr.A.P.Srinivas
(in all W.Ps)
For Respondent : Mr.K.Venkatesh
(in all W.Ps) Government Advocate

COMMON ORDER

Heard Mr.A.P.Srinivas, learned counsel for the petitioners and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent and with the consent, the Writ Petitions are taken up for final disposal.

2.In all these Writ Petitions, the petitioners have challenged the revised assessment orders dated 01.08.2016 and 02.08.2016, in respect of Tin Nos. TIN Nos.:33984060603, 33314061408, 33114060451(W.P.Nos.32263 to 32265 of 2016) & 33354060416 (W.P.No.32384 of 2016), for the assessment year 2013-14, under the provisions of the Tamil Nadu Value Added Tax]Act,2006 [TNVAT Act]. The short question which falls for consideration in these Writ Petitions is as to whether the petitioners have produced necessary records, invoice, etc., to substantiate their plea.

3.The impugned orders proceeds on the basis that the records have not been produced. Apart from that one other observation was made by stating that the petitioners have not proved that the entire tax paid on purchases had been remitted to the Government. Of course, the petitioners being the purchasing dealers, cannot be called upon to prove the remittance of tax paid by the selling dealer.

4.This was one of the grounds which was pointed out when the matter was considered afresh by the Assessing Officer, after the remand order by the Appellate Authority. At this juncture, it is relevant to point out that when the petitioners raised all contentions before the Appellate Authority, the Appellate Authority was satisfied and stated that one of the Group concern viz. Senthil Pipe Corporation (petitioner in W.P.Nos.32384 of 2016). In respect of an identical transaction which culminated in order of assessment dated 11.6.2015, the petitioner was able to convince the Appellate Authority by producing the copies of the invoices, where the Value Added Tax is fully shown, without reducing for discount. Therefore, the Appellate Deputy Commissioner (CT), Cuddalore in A.P.No.269 of 2015, remanded the matter to the Assessing Officer by issuing the following directions:

> "I heard the arguments and the following order is made:
>
> During the appeal, the Authorized Representative stated that the discount of Rs.34,688/- was received due to prompt payment and tax element was not reduced. He also quoted the circular of Commissioner of Commercial Taxes circular No.29/2015,D3/22678/2015. He also produced copies of invoices, where the VAT is fully shown, without reducing for discount.
>
> Hence the appeal is remanded directing the appellant to produce the invoice copies to he Assessing Officer and to verify the discount received. Penalty is also set aside and remanded.
>
> In fine the appeal is REMANDED."

5.After the order was passed by the Appellate Deputy Commissioner, the Assessing Officer issued a summon on 08.03.2016, for which the petitioner therein (Senthil Pipe Corporation) submitted their reply on 20.04.2016. Thereafter, several notices were issued and ultimately, the impugned assessment order was passed in the said case on 02.08.2016, and the impugned order in all these cases are all verbatim replica of the same, by holding that the petitioners have failed to substantiate their claim with recorded evidence.

6.When the Appellate Authority was satisfied that the petitioners have produced the invoice copies and were directed to produce the same before the Assessing Officer and the petitioner having produced the same, nothing prevented the Assessing Officer to cause a thorough verification and then pass a speaking order. Therefore, the impugned orders in all these cases are out come of non-application of mind as have been passed in violation of the principles of natural justice, apart from not taking into consideration the direction issued by the Appellate Deputy Commissioner (CT), Cuddalore.

7.For all the above reasons, the Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded for fresh consideration to the respondent, who shall afford an opportunity of personal hearing and direct the petitioners to produce all the invoices and other documents, make thorough verification of the same and thereafter redo the assessments in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpa
To

The Commercial Tax Officer
Mayiladuthurai-II, Mayiladuthurai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.61454
+1cc to the Government Pleader, S.R.No.61032

SSI(CO)
EU(21/11/2016)

W.P.Nos.32263 to 32265 &
32384 of 2016