IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34303 to 34308 of 2016 &
connected WMPs Nos.29570 to 29575 of 2016

Faizan Tanning Industry
rep. by its Partner
Jawed Ahmed .. Petitioner in WP.34303 to 34307/2016

Fathima India
rep by its proprietor
C.Jawid Ahmed .. Petitioner in WP.34308/16

vs.

The Assistant Commissioner (CT)(FAC)
Ranipet (SIPCOT)
Ranipet. .. Respondent in all WPs

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the records on the records on the files of the respondent herein in TIN.33354362571/2010-11, 2011-12,2012-13, 2013-14,2014-15 & 2015-16 dated 30.08.2016, quashing the same.

For Petitioner (in all W.Ps) : Mr.N.Inbarajan

For Respondents (in all W.Ps) : Mr.S.Kanmani Annamalai Addl.Govt. Pleader

C O M M O N O R D E R

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondents. Since common issues are involved in all these cases and identical orders have been passed by the respondent, with the consent of the learned counsel appearing on either side, the Writ Petitions are heard together and are taken up for disposal.

2.The petitioner-Industry who is a registered dealer on the files of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act], and Central Sales Tax Act, 1956 [CST Act], are engaged in the manufacture of finished leathers. The respondent issued notices dated 26.07.2016, for all the six assessment years i.e. from 2010-11 to 2015-16, pursuant to the inspection conducted by the Enforcement Wing officials in the place of business of the petitioner on several dates between October 2015 and April 2016. Pursuant to which it was alleged that the (i) Purchases and Sales registers as prescribed under Rules 6(2)(b) and (c) have not been maintained and (ii) ITC claim and adjustment register as prescribed under Rule 6(9) (b) and (c) have not been maintained. Therefore, the respondent proposed to revise the turnover and also proposed to impose penalty.

3.The petitioner filed individual replies to all the notices, on of which is as follows:

> " 1)Reversal of ITC - Wastage of 2%
> The reversal of ITC on wastage of 2% is abnormal since our product is Goat and Sheep leather and in practical there won't be any trimming or cutting done for these products also we would like to inform you that our most of exports are against Form h purchase. We request you to kindly drop the proposal of ITC reversal of 2%.
>
> 2)Reversal of ITC on Sales Suppression
> The suppression in Sales are mainly due to the freight, Packing Charges and other charges which were not included in the return but as per the balance sheet auditor has included the same in the sales. The same is not the Sales omission. "

The above is the explanation only in respect of one assessment year viz. 2010-2011. Similarly, the reply has been given to all other notices for other assessment orders, as well wherein different issues were pointed out. Further, the petitioner clarified that there were some export sales exchange rate difference which the Auditor has made corrections when finalising the Balance Sheet. However they have paid the tax and therefore, requested the respondent to drop the proposal for levy of penalty. The respondent on receipt of the replies for the notices, did not afford any opportunity of personal hearing, but, completed the assessments.

4.Under normal circumstances, a Writ Petition is not maintainable challenging the order of assessment, since, Act provides for hierarchy of remedies. However, there is an exception to such Rules in cases where the order is in violation of principles of natural justice or blatantly in violation of the statutory provisions, outcome of non-application of mind etc.

5.On a perusal of the impugned orders, it is seen that the reasons for confirming the proposal in the notice is found only in the last paragraph. However, on a closer reading, it is seen that the same is devoid of reasons and all that the Assessing Officer has stated is that the petitioner has accepted the defects and signed their report prepared by the Audit Officials.

6.The impugned orders are classical examples as to how assessment orders should not be passed. Time and again, this Court has pointed out that the Assessing Officer is an independent statutory authority and he has to consider the objections given by the dealer to the proposal in the notices in an independent manner and not be solely guided by the report of the Enforcement Wing Officials. In the instant case, the respondent did not even discuss about the correctness of the stand taken by the petitioner in their objections. Therefore, this Court has no hesitation to hold that the impugned orders are devoid of reasons and it is in violation of principles of natural justice and these are good and sufficient grounds to interfere with the same.

7.Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration, who shall consider the objections given by the dealers dated 10.08.2016, afford an opportunity of personal hearing to the petitioner and thereafter redo the assessments in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa

To

The Assistant Commissioner (CT)
Ranipet (SIPCOT)
Ranipet.

+1 cc to Mr.N.Inbarajan Advocate sr 55984
+1 cc to special Government Pleader Taxes sr 56137

W.P.Nos.34303 to
34308 of 2016

gj(co)
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