IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

C O R A M

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

W.P.Nos.35035 & 35036 of 2016 & WMP.Nos.30206 & 30207 of 2016

M/s.Capricon Food Products India
Pvt.Ltd., Rep. by its Group Advisor
and its Authorised Signatory
Mr.M.Murugesan. .. Petitioner in both W.P.

Versus

1. The Commercial Tax Officer,
Kilpauk Assessment Circle
No.50, 1st Avenue, Anna Nagar East,
Chennai 600 102.

2. The Commercial Tax Officer, Gr.1
Enforcement (Central),
PAPJM Building,
Chennai 600 006. ..Respondents in both W.P.

Prayer in both W.P.:- Petitions filed under Article 226 of the Constitution of India praying to issue Writs of Certiorari to call for the impugned proceedings of the first respondent respectively in (i) TIN/33161121372/2007-2008 dated 31.5.2016 and the consequential proceedings in TIN:33161121372/2007-2008 dated 29.8.2016 and (ii) TIN/33161121372/2008-2009 dated 31.5.2016 and the consequential proceedings in TIN:33161121372/2008-2009 dated 29.8.2016 and to quash the same as passed in contrary to the provisions of the TNVAT Act and against the principles of natural justice.

For Petitioner ... Mr.P.Rajkumar in both petitions
For Respondents ... Mr.K.Venkatesh, G.A. in both Petitions

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate, accepting notice for the respondents. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a manufacture of food products made out of fruits and vegetables and is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu

Value Added Tax Act 2006 (hereinafter called the TNVAT Act) and the Central Sales Tax Act, 1956.

3. In these writ petitions, the petitioner has challenged the orders of the assessment under the Tamil Nadu Value Added Tax Act for the years 2007-2008 and 2008-2009 dated 31.5.2016 as well as the orders rejecting the petitioner's applications under Section 84 of the TNVAT Act, refusing to exercise jurisdiction to revise the assessments, both passed by the first respondent.

4. The short question, which falls for consideration, is as to whether the petitioner submitted objections to the Assessing Officer before completing the assessment. On a perusal of the assessment orders dated 31.5.2016, it is seen that the Assessing Officer has recorded that in spite of granting opportunity, the petitioner did not submit their objections.

5. The petitioner's case is that on receipt of the notices dated 18.3.2016, they had submitted their reply on 13.4.2016, which was delivered in the office of the first respondent and to prove that, they produced a copy of the letter delivery book, which contains the signature.

6. Further, after the receipt of a copies of the assessment orders, the petitioner filed applications for revision of the assessment under Section 84 of the TNVAT Act dated 22.08.2016 explaining the nature of transaction and also enclosed necessary documents to prove their stand. The petitioner requested the Assessing Officer to consider their applications, taking into consideration the documents, redo the assessment and drop the penalty. The first respondent, while passing the orders dated 29.8.2016 rejecting the petitioner's applications under Section 84 of the TNVAT Act, accepted the fact that the petitioner had filed a reply on 13.04.2016. However, in the assessment orders, the first respondent has stated as if the petitioner had not filed their objections. Therefore, the stand taken in the assessment orders is factually incorrect.

7. With regard to the documentary evidence, the first respondent would accept the fact that the documents enclosed by the petitioner along with the applications under Section 84 of the TNVAT Act need verification and a decision to be taken. In spite of such observations, it appears that the first respondent was fully carried away by the proposals received from the Enforcement Wing Officers. Therefore he declined to exercise jurisdiction under Section 84 of the TNVAT Act.

8. The settled legal principle is that the Assessing Officer, being an independent Statutory Authority, cannot be solely guided by the report of the Enforcement Wing Officers, as held by this Court in the case of Madras Granites (P) Ltd. Vs.

CTO, Arisipalayam Circle, Salem [reported in 146 STC 642]. Therefore, the manner, in which, the applications under Section 84 of the TNVAT Act came to be rejected is not in accordance with law. This is sufficient to hold that the orders dated 29.8.2016 are not sustainable.

9. Furthermore, since the first respondent herself has accepted the receipt of first objections dated 13.4.2016, the finding recorded in the impugned assessment orders stating that the petitioner has not filed any objection, is incorrect. Therefore, this Court is inclined to allow the writ petitions by setting aside the proceedings dated 29.8.2016 as well as 31.5.2016.

10. Accordingly, the writ petitions are allowed, the impugned orders dated 31.5.2016 and 29.8.2016 are set aside and the notices dated 18.3.2016 are restored to the file of the first respondent. The petitioner is granted 15 days' time to submit a detailed reply along with documents and on receipt of the reply and documents, the first respondent shall afford an opportunity of personal hearing and re-do the assessment in accordance with law without solely be guided by the proposal received from the Enforcement Wing/2nd Respondent. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Commercial Tax Officer, Kilpauk Assessment Circle,
No.50, I St Avenue, Anna Nagar East,
Chennai 600 102.

2. The Commercial Tax Officer, Gr.1, Enforcement (Central),
PAPJM Building,
Chennai 600 006.

+1 cc to Mr.P.Rajkumar, advocate,sr.56851

+1 cc to Spl.Government Pleader,sr.57065.

Ak(co)
krd 24/10

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