IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.35350 to 35357 of 2016 and
WMP Nos.30435 to & 30442 of 2016

Tvl.Govindan Stores
rep. by its Proprietor R.S.Shanmugam ..petitioner in all WPs

vs.

The Commercial Tax Officer
Kothawalchavadi Assessment Circle
Chennai. .. Respondent in all WPs

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings in (i) TIN.No.33160182606/2007-08, (ii)TIN.No.33160182606/2008-09,(iii)TIN.No.33160182606/2009-10, (iv)TIN.No.33160182606/2011-12,(v)TIN.No.33160182606/2012-13, (vi)TIN.No.33160182606/2013-14,(vii)TIN.No.33160182606/2014-15 dated 31.08.2016 respectively and quash the same as been issued without authority of law and also against the judgment reported in 60 VST 283.

For Petitioner : Mr.A.Rajesh Kanna
(in all W.Ps.)

For Respondent : Mr.K.Venkatesh
(in allW.Ps.) Govt.Advocate

C O M M O N O R D E R

Heard Mr.A.Rajesh Kanna, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice for the respondent in all Writ Petitions. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for disposal.

2.The petitioner in these Writ Petitions is the Proprietor of a Stores, dealing in buying and selling Grocery Items (General Goods) and they are registered on the file of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act]. The orders impugned in these Writ Petitions are the assessment orders under the provisions of the TNVAT Act for the years 2007-08 to 2014-15.

3.The learned counsel for the petitioner would contend that the petitioner has got an excellent case on merits, since the issue involved in respect of all the assessment years is covered by the decision of this Court in SRI VINAYAGA AGENCIES v. ASSISTANT COMMISSIONER (CT), VADPALANI-I ASSESSMENT CIRCLE, CHENNAI AND ANR [(2013) 60 VST 283 (Mad)].

4.Therefore, it is submitted that though the petitioner could not give the objections in time, the petitioner can be granted an opportunity to appear before the Assessing Officer to prove the bonafide transactions.

5.I have heard the learned Government Advocate on the above submissions.

6.Considering the fact that the petitioner is a proprietary concern, in the business of buying and selling Grocery items and the assessments have been completed exparte on account of the failure on the part of the petitioner to appear before the Assessing Officer and give objections, inspite of a reminder notice having been sent, this Court would not be inclined to grant an unconditional remand and would consider granting such opportunity, subject to payment of certain portion of the disputed tax.

7.Accordingly, the petitioner is directed to remit 15% of the disputed tax for each of the assessment orders, within a period of four weeks from the date of receipt of a copy of this order and if the same is paid within the time permitted, then the petitioner will be entitled to treat the impugned orders as show cause notices and submit their objections within a period of fifteen days from the date on which payment has been made. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessments in accordance with law. If the petitioner fails to remit the amount within the time permitted, the benefit of this order will not enure to the petitioner and the Writ Petitions would stand automatically dismissed without further reference to this Court, leaving it open to the petitioner to workout their remedies under the provisions of the TNVAT Act. On the other hand, if the petitioner complies with the condition, then the respondent shall not take any coercive action for recovering the balance amount. Needless to state that when the Assessing Officer considers the petitioner's objections and the assessments are redone, the Assessing Officer should independently apply his mind to the explanations given by the petitioner and not solely be guided by the reports submitted by the Officials of the Enforcement Wing.

The Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa
To

The Commercial Tax Officer
Kothawalchavadi Assessment Circle
Chennai.

+8 ccs to M/s.A.Rajesh Kanna Advocate sr 57386/16
+1 cc to Special Government Pleader (Taxes) sr 57413/16

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