In the High Court of Judicature at Madras

Dated : 07.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.35808 to 35812 of 2016
& WMP.Nos.30755 to 30761 of 2016

Vakkal Impex P. Ltd., rep. by
its Director M.A.Rahamathullah ...Petitioner

Vs

The Assistant Commissioner (CT),
Sriperumbudur Assessment Circle
at Varadharajapuram, Chennai-123. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in TIN No.33871665394/2007-08, TIN No.33871665394/2008-09, TIN No. 33871665394/2011-12, TIN No.33871665394/2012-13 and TIN No. 33871665394/2014-15 respectively, dated 31.8.2015 and quash the same.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate takes notice for the respondent. Heard both.

2. The petitioner is a registered dealer on the file of the respondent under the Tamil Nadu Value Added Tax Act, 2006 as well as the Central Sales Tax Act,1956. In these writ petitions, the petitioner has challenged the orders of assessment under the State Act for the years 2007-08, 2008-09, 2011-12, 2012-13 and 2014-15.

3. At the first instance, this Court posed a question as to how these writ petitions are maintainable in the light of the earlier order passed by this Court in the writ petition filed by the petitioner in W.P.No.27657 of 2016 dated 9.8.2016.

4. The learned counsel for the petitioner would submit that the grounds now urged in these writ petitions were not pointed out while

the earlier writ petition was decided and that therefore, the petitioner is before this Court challenging the assessment orders.

5. The submission made by the learned counsel for the petitioner does not merit consideration for the reason that the petitioner filed earlier writ petition in W.P.No.27657 of 2016 seeking to quash the demand notice dated 10.6.2016. The contention was that the orders of assessment dated 31.8.2015 (orders impugned in these writ petitions) were communicated to the petitioner and they were received by them only on 15.3.2016. This Court took note of the fact that the petitioner had not challenged the orders of assessment and that therefore, they could not maintain a challenge to the demand.

6. However, after taking into consideration that the petitioner should not be denied a reasonable opportunity to test the correctness of the assessment orders, this Court was inclined to grant sometime to the petitioner to file appeals before the Appellate Authority as against the impugned assessment orders. Accordingly, the said writ petition was disposed of by an order dated 9.8.2016 and the operative portion of the same reads as follows :

> "Since it is stated by the petitioner that the assessment orders dated 31.8.2015 were served on the petitioner on 15.3.2016, the writ petition is disposed of with a direction to the petitioner to prefer appeals before the Appellate Authority challenging the assessment orders dated 31.8.2015 for the years 2007-08, 2008-09, 2011-12, 2012-13 and 2014-15, within 15 days from the date of receipt of a copy of this order. If such appeals are filed, the Appellate Authority shall entertain the same without reference to the question of limitation and it is open to the petitioner to move proper interim applications for appropriate interim orders before the Appellate Authority along with the main appeals. Till the appeals are filed, the respondent is directed to keep the impugned demand in abeyance."

7. In compliance with the directions issued as above, the petitioner filed appeals before the Appellate Authority and it is admitted that the appeals have been returned by the Appellate Authority on account of non payment of pre-deposit. Thus, the petitioner, having complied with the direction issued in the earlier writ petition wherein the petitioner was granted liberty to file appeals, cannot now approach this Court and make a request that this Court should test the correctness of the impugned assessment orders, which are now the subject matter of appeals filed by the petitioner, as the appeals have only been returned by the Appellate Authority to the petitioner for non compliance of the pre-deposit condition. Therefore, the petitioner is estopped from questioning the

correctness of the impugned assessment orders by filing the present writ petitions, especially after having availed the liberty granted by this Court in W.P.No.27657 of 2016.

8. Accordingly, the writ petitions are dismissed. No costs. Consequently, the above WMPs are also dismissed.

9. However, the petitioner is entitled to pursue the appeal remedy, if so advised.

-sd/-
Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT),
Sriperumbudur Assessment Circle
at Varadharajapuram, Chennai-123.

+1 cc to MR.R.KUMAR,Advocate SR.NO. 57831/2016
+1 cc to Government Pleader SR.NO. 58148/2016

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RD 12/11/2016