IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.36631 to 36636 of 2016
& WMP.Nos.31488 to 31493 of 2016

M/s.General Trading Company rep.
by its Proprietor M.N.Ammeen ...Petitioner in all the WPs

Vs

1.The Commercial Tax Officer,
Trichy Road Assessment Circle,
Coimbatore-18.

2.The Joint Commissioner (Enf.)
(CT), Coimbatore. ...Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the connected copies of the first respondent in his orders dated 30.7.2016 made respectively in TIN 33501884575/2009-10, TIN 33501884575/2010-11, TIN 33501884575/ 2011-12, TIN 33501884575/2012-13, TIN 33501884575/2013-14 and TIN 33501884575/2014-15 and quash the same.

For Petitioner : Mr.Fazulul Haq
For Respondents : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a trader in acids and chemicals and registered as a dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In these writ petitions, the petitioner has challenged the orders of assessment passed by the first respondent under the provisions of the said Act for the years 2009-10 to 2014-15.

3. The learned counsel has prefaced his submissions by contending that the petitioner may not be justified in bypassing the appeal

remedy available under the provisions of the said Act. But, on account of the fact that certain documents could not be produced by the petitioner along with reply to the pre-revision notices, the petitioner pleads for an opportunity to go before the Assessing Officer to place relevant documents to substantiate their case.

4. The place of business of the petitioner was inspected by the officials of the Enforcement Wing during the period from 3.3.2015 to 11.3.2015, in which, certain defects were noticed and based on the report of the officials of the Enforcement Wing, the first respondent issued notices to the petitioner pointing out the defects. The sum and substance of the allegation against the petitioner is that they sold detergents and not chemicals and that therefore, the first respondent proposed to reopen the assessment from 2009-10 onwards and assessed the petitioner's transactions to a higher rate of tax.

5. The petitioner contended that they commenced production only from October 2014, since they had purchased machinery for manufacturing detergents in August 2014. They further contended that the power connection was granted to the petitioner only in October 2014 by the Electricity Board.

6. Though such a stand was taken by the petitioner in their reply dated 16.2.2016, they did not produce any documents to substantiate the same. However, the petitioner should have sought for an opportunity of personal hearing, which they did not do. Nevertheless, while considering the correctness of the stand taken by the petitioner that they commenced production only in October 2014, nothing prevented the Assessing Officer in asking the petitioner to produce substantial evidence in that regard. However, this was not done by the Assessing Officer also. Ultimately, it has resulted in the impugned assessment orders assessing the transactions done by the petitioner from 2009-10 to 2014-15 at a higher rate of tax.

7. The petitioner's case is that they have sufficient documents to show that they commenced production only from October 2014 and on and from that date, they have been paying tax at a higher rate. They petitioner has pleaded one opportunity to go before the Assessing Officer to substantiate the same by producing relevant documents.

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

9. Considering the fact that the assessments are being reopened with retrospective effect from 2009-10 onwards and the petitioner's specific plea is that the manufacture of detergent powder commenced only from October 2014 and that they have sufficient documents to substantiate production, this Court is of the view that one indulgence can be shown to the petitioner to prove the above stand

before the Assessing Officer. However, for such purpose, this Court is not inclined to quash the impugned assessment orders. The petitioner can be permitted to file a petition under Section 84 of the said Act and produce necessary documents in support of their contentions, which shall be examined by the first respondent.

10. In view of the above discussions, the writ petitions are disposed of by directing the petitioner to file petitions under Sections 84 of the said Act within a period of two weeks from the date of receipt of a copy of this order, clearly setting out their stand duly supported by documents and if the same are filed, the first respondent shall verify the documents, afford an opportunity of personal hearing and after ascertaining the full facts, shall pass a speaking order on merits and in accordance with law on the petitions under Section 84 of the said Act. Till such orders are passed by the first respondent, no coercive action shall be initiated by the first respondent for recovering the tax as assessed in the impugned assessment orders. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Commercial Tax Officer, Trichy Road Assessment Circle,Coimbatore-18.
2.The Joint Commissioner (Enf.) (CT), Coimbatore.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.59374
RS

WP.Nos.36631 to 36636 of 2016&
WMP.Nos.31488 to 31493 of 2016

mg(co)
pmk.12.11.2016