IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.36728 & 36729 of 2016 &
W.M.P.NOs.31566 to 31569 of 2016

M/s Sudha Traders
rep. by its Proprietor Mr.S.Dhandapani
.. Petitioner in both W.Ps.

..Vs..

1.The Commercial Tax Officer
Arakonam Assessment Circle
Arakonam 631 001.

2.The Appellate Deputy Commissioner [CT]
C.T.Building, Fort Round
Vellore 632 001.
.. Respondents in both W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the records on the file of the second respondent common order in A.P.Nos.1020 & 1021 of 2015 dated 30.09.2016, and the connected proceedings o the first respondent in TIN/33204301883/2013-14 & 2014-15 dated 13.10.2015 and quash the same being violated the principles of natural justice, illegal, invalid and against the law and also law laid down by this Court.

For Petitioner : Mr.D.Vijayakumar
(in both W.Ps.)

For Respondents : Mr.K.Venkatesh
(in both W.Ps.) Government Advocate

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C O M M O N O R D E R

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. By consent, the Writ Petition itself is taken up for final disposal.

2.The petitioner is a dealer in cement and iron & steel and an assessee on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 [TNVAT Act]. In this Writ Petition, the petitioner has challenged the orders passed by the second respondent, the Appellate Authority in A.P.Nos.1020 & 1021 of 2015 dated 13.10.2015, for the years 2013-14 and 2014-15 under the provisions of the TNVAT Act.

3.The only contention advanced by the learned counsel for the petitioner is that inspite of the petitioner having specifically taken a stand that after duly accounted for all the transactions in their Books of Accounts, the Accounting transactions cannot be treated as suppression and that the petitioner has not claimed any ITC on the unreported purchases and inspite of having produced the Accounts Books and copies of the Purchase Ledger extract, the Appellate Authority did not make an endeavour to examine any of those records and mechanically confirmed the order of assessment. In fact the petitioner raised the very same contention before the Assessing Officer, but, curiously enough, the Assessing Officer stated that there is no need to call for the Accounts of the dealer under the VAT regime.

4.In the considered view of this Court, though the specific provision as found in the Tamil Nadu General Sales Tax Act, for production of the Books of Accounts, was not found in the TNVAT Act, that does not mean that the Assessing Officer can refuse to look into the Books of Accounts. The Assessing Officer, should bear in mind as to how the VAT regime works as it is a process of self assessment. Therefore, when the Assessing Officer takes up a case for revision of assessment, then obviously the dealer should be granted an opportunity to produce the Books of Accounts and other records to substantiate their stand. Therefore, the observation made by the Assessing Officer that he need not call for the Books of Accounts of the dealer is untenable.

5.When the petitioner approached the Appellate Authority viz. the second respondent with similar prayer, the second respondent did not outrightly reject the petitioner's contentions, but brushed aside the same and dismissed the Appeals by stating that the petitioner is not a manufacturer and they had not maintained proper stock book.

6.When the Appellate Authority is examining the correctness of the order passed by the Assessing officer, it is incumbent to examine all the facts. It is the settled legal position that the appeal is a continuation of the original proceedings and the appellate authority is entitled to re-examine all the factual issues. Therefore, what the Appellate Authority should have done is to direct the petitioner to produce the Books of Accounts and substantiate the claim that there is no sales suppression and they have not claimed any ITC on unreported purchases. Without doing so, the Appeal ought not to have been dismissed. Therefore, this is a fit case where the Appellate Authority should be directed to re-hear the appeal, examine the petitioner's Books of Account and then come to a conclusion.

7.Accordingly, the Writ Petitions are partly allowed and the orders passed by the second respondent in A.P.Nos.1020 and 1021 of 2015 (VAT) dated 30.09.2016, are set aside and the matter is remanded to the second respondent/Appellate Authority for fresh consideration, after affording an opportunity of personal hearing and after perusing the Books of Accounts and other documents that may be produced by the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

rpa

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Commercial Tax Officer
Arakonam Assessment Circle
Arakonam 631 001.

2.The Appellate Deputy Commissioner [CT]
C.T.Building, Fort Round
Vellore 632 001.

+1CC to MR.D.VIJAYAKUMAR Advocate SR.NO.60726
+1CC to Spl Govt Pleader SR.NO.61033

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36729 of 2016

MK:12/11/2016