IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2016

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.Nos.38614 to 38620 of 2016

and WMP Nos.33074 to 33080 of 2016

Khurinji Homes Private Limited
represented by its Managing Director,
V.Umasankareswari,
G6, Brown Nest Apartment,
73, 2nd Main Road, Gandhi Nagar,
Adayar, Chennai-600 020. ... Petitioner in all the writ petitions

vs.

The Assistant Commissioner (CT),
Kotturpuram Assessment Circle,
46, Greenways, Chennai-600 028... Respondent in all the writ petitions

Prayer in WP No.38614/2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33490984275/2007-08, dated 31.08.2016 and quash the same with the direction to the respondent to consider the objections.

Prayer in WP No.38615/2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33490984275/2008-09, dated 31.08.2016 and quash the same with the direction to the respondent to consider the objections.

Prayer in WP No.38616/2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33490984275/2009-10, dated 31.08.2016 and quash the same with the direction to the respondent to consider the objections.

Prayer in WP No.38617/2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33490984275/2010-11, dated 31.08.2016 and quash the same with the direction to the respondent to consider the objections.

Prayer in WP No.38618/2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33490984275/2011-12, dated 31.08.2016 and quash the same with the direction to the respondent to consider the objections.

Prayer in WP No.38619/2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33490984275/2012-13, dated 07.09.2016 and quash the same with the direction to the respondent to consider the objections.

Prayer in WP No.38620/2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33490984275/2013-14, dated 07.09.2016 and quash the same with the direction to the respondent to consider the objections.

For Petitioner in all the petitions : Mr.R.Kumar

For Respondent in all the petitions : Mr.Kanmani Annamalai, Additional Government Pleader

COMMON ORDER

1. With the consent of learned counsels for the parties, the writ petition is taken up for hearing and final disposal.

2. These are writ petitions, which lay challenge to seven (7) separate Assessment Orders, which are related to Assessment Years (in short "AY") 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014.

2.1. To be noted, out of the Assessment Orders, passed qua AYs.2007-2008 to 2011-2012, are dated 31.08.2016, while Assessment Order passed with respect to Ays. 2012-2013 and 2013-2014 are dated 07.09.2016.

3. Notice in the writ petitions was issued on 07.11.2016, by my predecessor and, for the reasons given in the order, interim protection was granted to the petitioner.

4. Brief facts, which are necessary for adjudication of the captioned writ petitions are noted hereafter :

4.1. The petitioner claims to be a registered dealer under the Tamil Nadu Value Added Tax, 2006 (in short 'the 2006 Act').

4.2. It is the petitioner's case that it is involved in works contract and is a "Flat Promoter". Furthermore, the petitioner avers that it opted for assessment under Section 5 of the 2006 Act, and accordingly, declared their deemed taxable turnover by adding gross profit on the net purchase value.

4.3. It is further stated that the monthly return in Form I were uploaded on the official website.

5. It appears that on 31.07.2014, an inspection was conducted by the Enforcement Wing of the Department. During the course of the inspection, the Inspecting Officers, apparently, verified the documents produced by the petitioner, and recorded the statement of the representative of the petitioner. Consequently, the sworn statement of, one, Thiru.A.Vijayakumar, the Authorized Signatory of the petitioner, along with the surprise inspection report was sent to the Assessing Officer.

5.1. Based on the report received from the Enforcement Wing, a show cause notice dated 22.10.2014, was issued to the petitioner for the AY 2007-2008. Similarly, for the Ays, spanning from 2008-2009 to 2013-2014, separate show cause notices were issued, the details of which, are as follow :

AY	Show Cause Notice Date
2008-2009	23.10.2014
2009-2010	24.10.2014
2010-2011	27.10.2014
2011-2012	28.10.2014
2012-2013	29.10.2014
2013-2014	30.10.2014

5.2. To each of these show cause notices, replies were filed by the petitioner.

5.3. The Assessing Officer, having regard to the replies given by the petitioner to the show cause notices issued, generated a deviation proposal dated 10.02.2015.

5.4. The findings returned in the deviation proposal by the Assessing Officer are as follows :

> "…. FINDING
>
> The dealers have filed copy of schedules on purchases accounts to the audited balance sheet for the years 2007-08 to 2013-14. The inspecting officers compared the purchases based on the figures shown in the audited balance sheet. I have verified them with the original audited balance sheet with the dealers produced, summary of purchase accounts for all

the years and also purchase bills it clearly shows that the total purchases include VAT paid on purchases shown in Column 5 in the reconciliation given above. The dealers have also availed the VAT paid on purchases as input credit to reduce the tax payable on deemed sale value. In view of the Sec 3(3) of the Act and also the clarification issued by the P.C. & C. (C.T) in Ref.VAT CELL/15090/2007 (VCC 672) dated 04.06.2007, the condition of the dealers may be accepted.

Hence among the deemed sale value of Rs.2,00,01,411/- for years 2007-08 proposed, the deemed sale value on the actual difference in purchase value for the following years only now arrived may be considered for assessment 60% at higher rate of 12.5% or 14.5% and 40% @ 4% or 5% as the case may be.

Year	Purchase value Rs.	G.P. @ 15%	Total Rs.
2007-08	3073	461	3534
2008-09	621	93	714
2010-11	15928	2389	18317
2011-12	257903	38685	296588
		TOTAL	319153

In view of the above the remaining deemed sale value of Rs.1,96,82,258/- proposed for the years 2007-08 to 2013-14 may kindly be deleted.

The other proposal made out by the Enforcement wing will be implemented without any deviation.

I therefore, request that the deviation proposal may kindly be forwarded for necessary.

The following records are submitted herewith for reference. ......"

(emphasis is mine)

5.5. This deviation proposal was forwarded by the Assessing Officer to his superior, i.e., Thiru.A.Swaminathan, Deputy Commissioner (CT), Enforcement (South), Chennai. It appears that Thiru.A.Swaminathan, Deputy Commissioner, forwarded the same to the Deputy Commissioner (CT) Zone VII, Chennai. The Deputy Commissioner, in turn, forwarded the deviation proposal to the Joint Commissioner (CT) Enforcement. The Joint Commissioner (CT) Enforcement, vide order dated 16.03.2016 noted as follows :

"Perused the deviation forwarded by the

> Deputy Commissioner (CT) Zone VII and Deputy Commissioner (CT) Enforcement (South) regard the Turnover difference between purchases as per return and as found recorded in the dealer's books of accounts. The explanation submitted by the dealer is that the purchases as per books was tax element built in and that the purchases as per return is without input tax.
>
> The factual explanation was verified with the copies of documents submitted by the dealer as well as inspection file.
>
> The schedules to the purchases A/c shows the various items purchased and the purchase tax paid. The ledger account copies finds place in the inspection file reveals that the purchase value gets debited to the purchase account and the tax paid gets debited to the input Tax Account separately. (Ledger Account of Thirumurugan agency supplying sand was verified).
>
> Thus the explanation submitted by the dealer is not factually correct and hence the deviation sought is rejected."

6. In the background of this development, the Assessing Officer issued a revised notice, for each of the AYs, in issue.

6.1. The revised notice, though separate, were of the similar date, i.e., 27.06.2016.

6.2. In response to the revised notices, the petitioner filed a separate reply. These replies, though separate, once again bore the same date, i.e., 26.07.2016. Furthermore, along with the replies, the petitioner enclosed the necessary documents to buttress its stand.

6.3. The record shows, as indicated above, that the Assessing Officer passed seven (7) separate Assessment Orders, out of which five(5) are dated 31.08.2016, while the remaining two (2) are dated 07.09.2016. As per the said Assessment Orders, the demand has been raised qua the petitioner with respect to the tax as well as penalty.

7. The petitioner, being aggrieved has filed the captioned writ petitions.

8. It is the case of the learned counsel for the petitioner that the Joint Commissioner, while rejecting its explanation via his report dated 16.03.2016 did not take into account take into account the contents of the deviation proposal.

8.1. Learned counsel further submits that the

Assessing Officer in passing the impugned orders seems to have been burdened by the report of the Joint Commissioner dated 16.03.2016, and therefore, has not taken into account the deviation proposal dated 10.02.2015.

8.2. It is also the submission of the learned counsel for the petitioner that the Assessing Officers in paragraph 9 of the impugned orders has wrongly indicated that no supporting document were filed with the reply by the petitioner.

8.3. Learned counsel for the petitioner relied upon the replies filed to the show cause notices issued, wherein, there is a reference to the annexures appended with the replies submitted in the matter.

9. On the other hand, S.Kanmani Annamalai, learned Special Government Pleader, who appears for respondent, says that the writ petition is not maintainable, in view of the fact that these orders could be challenged by the petitioner before the appellate forum as well.

9.1. On being queried, learned counsel for the respondent, however, does concede that there is no reference to the deviation proposal, either in the order of the Joint Commissioner or, in the impugned orders passed by the Assessing Officer.

9.2. Learned Special Government Pleader, who, appears for the respondent, is also, unable to explain the observations made in paragraph 9 of the impugned Assessment Orders, in view of what states one in the pace, which is that, the petitioner clearly appears to have appended Annexures with its replies to the revised notices.

9.3. Furthermore, however, learned counsel for the respondent takes the stand that insofar as the deviation proposal is concerned, it is an inter-departmental communication, which may or may not get reflected in the assessment proceedings. It is, therefore, the submission of the learned counsel for the respondent is that the writ petition ought to be dismissed.

10. I have heard the learned counsel for the parties.

11. I am of the view that the challenge in the writ petitions to the impugned orders is based on Wednesbury Principles. The respondent has failed to take into account not only the vital internal communication, which is the deviation proposal, but has also failed to not taken into account, relevant material filed by the petitioner along with its replies to the show-cause notices issued by the respondent.

12. The fact of the matter is that the deviation which was generated by the Assessing Officer did support the stand of the petitioner. The the Assessment Officer had examined the material placed on record, and thereafter, inspected the explanation of the petitioner.

13. While I am willing to accept the stand taken on behalf of the respondent that the Assessing Officer could come to a different conclusion from the one arrived at in the deviation proposal, however, such a view would have to be reflected in the impugned orders.

14. Unfortunately, in the impugned Assessment Orders there is no discussion about the deviation proposal or the documents filed by the petitioner, in support of the stand taken in the replies filed to the show cause notices. Curiously, in paragraph 9 of the impugned orders, the Assessing Officer, says that no supporting documents were filed. A perusal of the replies would show that documents were appended, whereas, the same appear to have been overlooked by the Assessing Officer.

15. Therefore, for the foregoing reasons, I am inclined to allow the captioned writ petitions. The impugned orders in respect of each of the aforementioned Assessment years are quashed. The respondent will, however, have liberty to pass fresh Assessment Orders, albeit, in accordance with law. Parties will bear their own costs.

16. Consequently, connected miscellaneous petitions shall stand closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Kotturpuram Assessment Circle,
46, Greenways, Chennai-600 028.

+1cc to Mr.Kumar, Advocate, S.R.No.72409
+1cc to the Government Pleader, S.R.No.72679

RSY(CO)
RS(12/01/2017)