IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.39293 to 39295 of 2016 and

W.M.P.Nos.33635 to 33637 of 2016

1 Boopalam Jewellers (P) Ltd
Rep. by its Director. C.L.Ragunathan 119
Cutchery Street
Thirupattur-635 601. ... Petitioner in all the W.Ps

Vs

1 The Assistant Commissioner(CT)
Tirupattur ... Respondent in all the W.Ps

Prayer : Writ Petitions have been filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records on the files of the respondent herein in TIN 33524623456/ 2013-14, 2014-15 and 2015-16, respectively, dated 19.10.2016 and to quash the same.

For Petitioner : Mr.K.A.Parthasarathy for Mr.N.Inbarajan in all the W.Ps.

For Respondent :Mr.K.Venkatesh, Government Advocate in all the W.Ps.

COMMON ORDER

Heard Mr.K.A.Parthasarathy for Mr.N.Inbarajan, the learned counsel for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, who accepts notice on behalf of the respondent and with the consent of either side, the writ petitions are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' in short), has challenged the impugned orders, which are orders of assessment under the provisions of the TNVAT Act for the years 2013-14, 2014-15 and 2015-16.

3. A VAT Audit was conducted by the Enforcement Wing Officers in the petitioner's place of business from 14.6.2016, during which, certain defects were noticed. Based on the reports submitted by the Enforcement Wing, the respondent/assessing officer issued notice to the petitioner, on 29.9.2016, proposing to revise the total and taxable turnover. The petitioner submitted their objections, dated 17.10.2016.

4. On a perusal of the said objection, it is seen that the objections are two fold. Firstly, that the petitioner is purchasing bullion inside the State of Tamil Nadu on payment of TNVAT. Such bullion is sent to artisans outside the State for conversion into jewellery and the converted jewellery is brought back to Tamil Nadu and sold inside the State of Tamil Nadu. On such sale TNVAT is being paid. Therefore, the value addition suffers TNVAT inside the State of Tamil Nadu. Further, it is submitted that the denial of credit, solely on the ground that manufacturing takes place outside the State, may not be correct and the purpose of VAT law is to tax value addition and the value addition in the petitioner's case suffers TNVAT in the State of Tamil Nadu and credit cannot be denied merely because the value addition takes place outside the State and such a treatment will be discriminatory.

5. Apart from the above factual explanation given by the petitioner, the petitioner stated that during the inspection, the books of accounts, namely, the purchases, sales and stock register were produced and they already produced the details of despatches to other States, labour bills for conversion of bullion into jewellery and their return into State of Tamil Nadu. Thus, the allegation that the petitioner did not maintain the books of accounts was denied.

6. Further, it is submitted that writ petitions are pending for declaratory relief in respect of Section 19(2) of the TNVAT Act and interim orders have also been granted in W.P.Nos.6377 and 6378 of 2010. The respondent, on receiving the objection, ought to have afforded a personal hearing, considered the objection petition on facts as well as on the legal grounds raised. But however, in a single line, the respondent stated that the objections of the dealer is not acceptable. The manner

in which the impugned assessment orders have been completed is untenable and it is in violation of principles of natural justice.

7. It is seen that the petitioner has not filed any writ petition for declaring the provisions of the Act as unconstitutional. Therefore, the petitioner cannot rely upon the orders obtained by the other dealers, to stall the assessment proceedings. Therefore, to that extent, the respondent was justified in not accepting the plea to defer the proceedings. However, the respondent should have considered the factual averments set out by the petitioner in their explanation, dated 17.10.2016, which has not been done. Therefore, this Court is of the considered view that the assessments should be re-done.

8. For the above reasons, the writ petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration, who shall consider the factual averments set out by the petitioner in their explanation, dated 17.10.2016, some of which have been referred to in the preceding paragraphs of this order, afford an opportunity of personal hearing to the petitioner and re-do the assessments, in accordance with law. No costs. Connected miscellaneous petitions are closed.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To

1 The Assistant Commissioner(CT)
Tirupattur

+1 cc to M/s.N.Inbarajan Advocate sr 64517
+1 cc to Special Government Pleader Taxes
High court Madras sr 64785

W.P.No.39293 to 39295 of 2016

rsk(co)

aa08/12/2016