IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13462 & 19769 of 2004

and

WPMP.No.15768 of 2004

Tvl Fal Industries Limited,
Perungudi,
Chennai - 600 096. ...Petitioner in W.P.No.13462/ 2004

* Cause title amended as per order dated 03.12.2012
made in WP.No.384/2012
Tvl Forbes & Co.Ltd.,
Perungudi,
Chennai - 600 096. ...Petitioner in W.P.No.19769/2004

Vs.

Commercial Tax Officer,
Thiruvanmayur Assessment Circle,
98, Annai Velankanni Church Road,
Vannanthurai, Besant Nagar,
Chennai - 600 090. ..Respondent in both WPs.

PRAYER in W.P.No.13462 of 2004:- Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in ref.TNGST.0920007/98-99 dated 30.01.2004 of the impugned assessment order on the file of the respondent and quash the same.

PRAYER in W.P.No.19769 of 2004:-Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in ref.TNGST.0920007/98-99 dated 30.04.2004 of the impugned assessment order on the file of the respondent and quash the same.

For Petitioner : Mr. R. Prem Kumar
for M/s. King & Partridge
For Respondent in both WPs : Mr. Kanmani Annamalai
Additional Government Pleader (Taxes)

ORDER

Heard Mr. R. Prem Kumar, learned counsel, appearing on behalf of M/s.King and Partridge, learned counsel for the petitioners and Mr.Kanmani Annamalai, Additional Government Pleader (Taxes), appearing for the respondent.

2. In both these Writ Petitions, the petitioners have challenged the order of assessment for the years 1989-1999 and 1999-2000 under the provisions of the Tamilnadu General Sales Tax Act (in short " TNGST Act, 1959)".

3. Though several contentions have been raised by the learned counsel for the petitioners, it may not be necessary to deal with all such contentions at this juncture. Since, this Court is satisfied that the order of assessment has been passed in utter disregard with the direction issued by the Appellate Assistant Commissioner (CT), Kancheepuram, in his order dated 31.05.2001. The said appeal arose out of a order of assessment for the assessment year 1998- 1999. The appeal filed by the petitioner in Appeal No.49/2001 was allowed on 31.05.2001 and the matter was remanded for fresh consideration by the Assessing Officer/Appellate Assistant Commissioner. The Appellate Assistant Commissioner while effecting remand, has issued a direction to the Assessing Officer to complete the assessment after due verification of the invoices and also to find out whether the dealer had charged Maximum Retail Price as sales price and then pass appropriate orders and if they charged as per the sales price, the assessment has to be sustained.

4. The learned counsel for the petitioners submitted that this direction has not been complied with by the respondent and once again, the same assessment order has been passed which has been challenged in these Writ Petitions. In the counter filed by the respondent, it is stated that the order of assessment is only a simple assessment with a direction to verify the invoices raised during the assessment year in respect of sales of vacuum cleaner and find out whether the dealer had charged MRP as sale price and then pass appropriate orders accordingly.

5. The counter does not specifically states that the verification of invoices was done in terms of the Appellate Assistant Commissioner (CT) Kancheepuram. At this stage, it would be relevant to take note of the direction of the Appellate Assistant Commissioner(CT) Kancheepuram, in the order dated 31.05.2001, which is quoted herein in page-12 of the typed set of papers.

> "In the instant case of the appellant, the appellant have not charged MRP as the price of the goods. Therefore, it is manifest evident that they have charged the basic price as sale price and not MRP. The Assessing Officer does not possess only evidence of record to show that they have charged MRP as sale price. I find from the records that the Assessing Officer has treated the difference turnover between the 60% of MRP and the value charged as sale price in the invoices raised by them as amount received toward the sale of Vaccum Cleaner without any evidences whatsoever to hold so. Moreover the turnover brought to taxation were factually not with reference to any records maintained by them.
>
> However, before coming to the above irresistible conclusion, a thorough verification of the whole invoices raised by the appellant is felt necessary so as to whether the appellant have charged MRP as sale price in the invoices, if charged the assessment made has to be sustained.
>
> In view of the above, I set aside the assessment on Rs.1,77,79,090 and remand back to the Assessing Officer with a direction to verify all the invoices raised during the relevant assessment years in respect of sale of vaccum cleaner and to find out whether the appellant have charged MRP as sale price and to pass appropriate orders as discussed above.
>
> The Assessing Officer has levied of Rs.47,57,921 u/s.12(3) (b) of the Act. As the issue relating to turnover is remanded in the pre-para, the issue relating to penalty is also remanded to the Assessing Officer with a direction to consider penalty levy if need be.

In the result, the appeal is REMANDED.

Thus, the above direction issued by the appellate authority is specific and the Assessing Officer ought to have examined the invoices from the point of view as directed by the appellate authority. If this has not been done by the Assessing Officer and the same would be called for the interference. Further more, the learned counsel for the petitioners pointed out that this issue arose only for the two assessment years viz., 1998-1999 and 1999- 2000 and from the year, 2000, no such issue has been raised by the Assessing Officer considering the invoices raised by the petitioners. Further, the contention of the petitioners is that they are paying the Excise Duty on the MRP as per the (Union Budget) Notification issued by the Central Excise (vide amended Central Excise Notification No.13/2002)CE(NT) dated 01.03.02, where a specific amendment has been made only with regard to payment of Excise duty and the respondents/Sales Tax authorities cannot consider the same as an yardstick to calculate the sales tax on the value adopted for arriving excise duty and put the petitioner in jeopardy.

6. In the light of the above, the impugned orders call for interference.

In the result, these writ petitions are allowed and the impugned orders dated 30.01.2004 and 30.04.2004 are set aside and the matters are remanded back to the Assessing Officer for fresh consideration who shall take note of the directions issued by the Appellate Assistant Commissioner (CT), Kancheepuram

and to proceed further in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To
1 The Appellate Assistant Commissioner (CT)
Kancheepuram

2 Commercial Tax Officer,
Thiruvanmayur Assessment Circle,
98, Annai Velankanni Church Road,
Vannanthurai, Besant Nagar,
Chennai - 600 090.

+1 CC to Spl. Govt., Pleader, Sr.NO.52392
+4 CC to M/s. King and Partidge, Advocate Sr.NO.51984 & 51985

W.P.Nos.13462 & 19769 of 2004 and
WPMP.No.15768 of 2004

LRS (CO)
MD : 21/10/2016