In the High Court of Judicature at Madras

Dated : 28.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.40803 to 40806 of 2016
& WMP.Nos.30769 to 30772 of 2016

M/s.Bannari Amman Spinning Mills Ltd., rep.by its Managing Director S.V.Arumugam ...Petitioner in all the WPs

Vs

1.The Assistant Commissioner (CT),
Mettupalayam Road Circle,
Coimbatore-18.

2.The Joint Commissioner (Enf.)
(CT), Coimbatore-18. ...Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus

(i) to call for the records relating to the impugned proceedings of the 1st respondent in TIN No.33942000927/ 2009-2010 dated 29.7.2016, quash the same and consequently direct the 1st respondent herein to give credit to the Input Tax Credit of Rs.35,28,200/- under TNVAT Act for the year 2009-2010 (WP.No.40803 of 2016);

(ii) to call for the records relating to the impugned proceedings of the 1st respondent in TIN No.33942000927/ 2010-2011 dated 29.7.2016, quash the same and consequently direct the 1st respondent herein to give credit to the Input Tax Credit of Rs.31,42,015/- under TNVAT Act for the year 2010-2011 (WP.No.40804 of 2016);

(iii) to call for the records relating to the impugned proceedings of the 1st respondent in TIN No.33942000927/ 2011-2012 dated 29.7.2016, quash the same and consequently direct the 1st respondent herein to give credit to the Input Tax Credit of Rs.56,77,925/- under TNVAT Act for the year 2011-2012 (WP.No.40805 of 2016); and

(iv) to call for the records relating to the impugned proceedings of the 1st respondent in TIN No.33942000927/ 2012-2013 dated 29.7.2016, quash the same and consequently direct the 1st respondent herein to give credit to the Input Tax Credit of Rs.49,92,583/- under TNVAT Act for the year 2012-2013 (WP.No.40806 of 2016).

For Petitioner : Mr.Adithya Reddy in all the WPs
For Respondents : Mr.K.Venkatesh, GA in all the WPs

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. In these writ petitions, the petitioner challenges the orders of assessment dated 29.7.2016 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The first and foremost thing to be pointed out is that there is no justifiable reason for the petitioner to bypass the appeal remedy available under the provisions of the said Act. Furthermore, the orders of assessment were dated 29.7.2016 and the petitioner has not been diligent enough to prosecute the remedies under the said Act and has challenged the impugned proceedings by filing these writ petitions only in November 2016.

4. However, it is seen that the petitioner has raised a legal issue stating that the Assessing Officer referred to Section 19(11) of the said Act and that the said provision would have no application on the petitioner's returns. Further, this issue is not purely a legal issue, but a mixed question of facts and law. Therefore, this issue also has to be necessarily agitated by the petitioner before the Appellate Forum.

5. Thus, considering the peculiar facts and circumstances of the case, while holding that the writ petitions are not maintainable, the writ petitions are dismissed and liberty is granted to the petitioner to file appeals before the Appellate Authority. If such appeals are filed within 30 days from the date of receipt of a copy of this order, the Appellate Authority shall entertain the appeals without reference to the question of limitation. Till then, the respondents shall not initiate any coercive action pursuant to the impugned assessment orders. It is needless to state that the petitioner shall comply with the mandatory condition of pre-deposit at the time of filing the appeals. No costs. Consequently, the above WMPs are also dismissed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner (CT), Mettupalayam Road Circle,
Coimbatore-18.

2.The Joint Commissioner (Enf.) (CT), Coimbatore-18.

+1 cc to Mr.Adithya Reddy, advocate,sr.69469

+1 cc to Spl.Govt.Pleader,sr.69602

ug(co)
krd 29/11

WP.Nos.40803 to 40806 of 2016&
WMP.Nos.34769 to 34772 of 2016