IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.42486 to 42488 of 2016
and
W.M.P.Nos.36377 to 36379 of 2016

Tvl.Sonal Fashion Jewellery,
rep.by its Proprietor,
No.131, T.Nagar,
Pondy Bazar,
T.Nagar, Chennai-17 ... Petitioner in all the W.Ps.

Vs.

The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
Chennai ... 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 of the proceedings of the respondent dated 31.08.2016 in TIN No.33371583122/2012-13, 2013-14 and 2014-15, respectively and quash the same.

For Petitioner : Mrs.D.Naveena
for Adithya Reddy
in all the W.Ps

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

COMMON ORDER

Heard Mrs.D.Naveena, 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. One other reason for the Court to dispose of the writ petitions is because the assessment orders have been passed on the ground that the petitioner failed to produce documentary

evidence. What is relevant to note is that the pre-assessment notices were issued on 25.08.2015 and 6.10.2015, pursuant to a surprise inspection which was conducted on 16.04.2015.

3. The petitioner submitted their objections on 15.10.2015, which have been acknowledged by the office of the respondent. However, for nearly one year, no orders were passed and the assessment orders came to be passed on 31.08.2016 on the ground that the petitioner did not produce documents. 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, has questioned the assessment orders under the said Act for the years 2012-13 to 14-15. Initially the pre-assessment notices contained seven proposals, which included a proposal to levy penalty. The petitioner submitted their objections and the objections were taken note of and three out of the seven proposals were dropped, accepting the stand taken by the petitioner. The petitioner has challenged the impugned assessment orders only on the remaining four proposals which have been confirmed.

4. On a perusal of the impugned order of assessments, dated 31.08.2016, for the year 2012-2013, the respondent has rejected the petitioner's objection solely on the ground that the petitioner has not produced sale bill copies to substantiate their objections; not filed any vouchers or receipts in respect of service charges and coolie and not produced purchase bill copies. Therefore, if the respondent was of the view that the documents produced by the petitioner were insufficient, nothing prevented him from directing the petitioner to appear in person and produce the documents. This can even be done by the assessing officer, especially when he is taking up the adjudication of the notices for one year.

5. At this stage, it would be relevant to take note of the observations of this Court in the case of Dharani Sugars and Chemicals vs. Assistant Commissioner (CT), reported in 2015(83) VST 233, wherein it is held as follows:

> "The conclusion of the assessing officer is solely based on the ground that there is no evidence available. But there is no discussion in the assessment order as to the effect of the submissions made by the petitioner and the documents produced. The assessing officer does not out rightly reject the explanation offered nor the documents produced.
>
> In such circumstances, if the assessing officer was of the view that the documents were not adequate to establish their claim, then

> fairness demands that the petitioner/dealer should have been issued a notice in this regard, information should have been called for, they should have been directed to appear in person and produce all records. However, the assessing officer appears to have drawn an adverse inference while passing the assessing order which is contrary to law."

6. Thus, in terms of the above decision, the fairness in approach on the part of the assessing officer would be to direct the dealers to produce the documents and without calling upon them to produce documents and complete the assessment stating that it is being done on account of non-production of documents, will amount to violation of principles of natural justice and the assessing officer shall not be justified in drawing an adverse inference on that ground.

7. Accordingly, the writ petitions are allowed. The impugned orders are set aside and the matter is remanded to the respondent for fresh consideration and the petitioner is granted two weeks time from the date of receipt of a copy of this order to produce all the documents as required by the respondent and on production of such documents, after affording an opportunity of personal hearing, the respondent shall re-do the assessments in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
Chennai.

+1cc to the Special Government Pleader(T), S.R.No.71509

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NRJK(CO)
CA(21/12/2016)