IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. Nos.42625 to 42633 of 2016

M/s.Sree Vigneswara
Marbles & Granites,
represented by its Partner .. Petitioner in all cases

v.

1.The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi.

2.The Commercial Tax Officer (Enf.),
BTPS, Coimbatore.

3.The Deputy Commercial Tax Officer,
Enforcement, CEW-1,
Coimbatore. .. Respondents in all cases

Prayer in W.P. No.42625 of 2016: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the respondent in his proceedings in TIN:33792082732/2007-2008, 2008-2009,2009-2010, 2010-2011,2011-2012, 2012-2013, 2013-2014, 2014-2015,2015-2016 quash the assessment order dated 17.10.2016 made therein.

For petitioner in all cases : Mr.P.Rajkumar

For respondents in all cases : Mr.K.Venkatesh
Government Advocate

WEB COPY

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who accepts notice on behalf of the respondents.

2.In these writ petitions, the petitioner has challenged the assessment orders for the years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

3.Learned counsel for the petitioner contended that the first respondent has failed to appreciate the fact that when the original assessment is a deemed assessment where the returns filed and taxes paid are accepted without calling for production of the books of accounts, it is incumbent on the part of the assessing authority to call production of the books of accounts for verification before initiating the revision proceedings. Failure to call for production of the books of accounts/records only reflects the pre-determined mind of the first respondent to confirm the proposals as forwarded by the enforcement wing. He would further submit that the first respondent is wrong in passing the impugned assessment orders by following the D3 report received from the Enforcement Wing without an independent application of mind and in rejecting the objections filed by the petitioner by stating that the petitioner had accepted the fact of non-reporting/under reporting of freight before the inspecting Officers and therefore, cannot go back against their own statement. In stating so, the first respondent failed to appreciate that statement was recorded and prepared by the Inspecting Officers themselves and obtained the signature of the petitioner.

4.Learned counsel for the petitioner further contended that the first respondent ought to have seen that the statement recorded at the time of inspection has no sanctity and cannot be relied upon to reject the objections filed by the petitioner in response to the pre-revision notices. In any event it is well settled that statement obtained at the time of inspection is not final and it is always open to the dealer to substantiate its contentions by documentary evidence. Adding further he would submit that the first respondent has failed to appreciate the contention of the petitioner that their purchases both local and interstate are on CIF basis where the carriage, insurance and freight upto delivery at the door steps of the petitioner is included in the invoice of the seller and that in as much as the freight element already forms part of the purchase invoice, there was no need or necessity to pay or account for any freight charges separately.

5.It is further submitted by the learned counsel for the petitioner that though the petitioner had given a detailed objections of the nine assessment orders seeking time to get instruction, orders have been passed on the same day by the respondents without affording any opportunity to the petitioner to produce the documents and not considering the documents and the stand taken by the petitioner in the objections. Therefore, he would contend that the Assessing Officer has not taken note of the relevant aspects of the matter and did not given opportunity to the petitioner to produce the documents.

WEB COPY

6.In my considered view that if the respondents/Assessing Officers was of the opinion that documents are required to be produced, then the dealer can be directed to appear in person and produce the documents and this will avoid unnecessary litigation and also will ensure prompt collection of correct rate and quantum of tax and if that procedure had been adopted, these writ petitions could have been avoided. However, for the reasons set out in the preceding paragraphs, this Court is not inclined to set aside the impugned order. However, the petitioner should not be left without any remedy. Therefore, the petitioner is directed to file objections under Section 84 of the Tamil Nadu Value Added Tax for rectification of the assessment in which the petitioner is entitled to raise all contentions and produce the documents and that application will be filed within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the respondents shall consider the same and pass orders within a period of two weeks after the date on which personal hearing is conducted.

7.In the light of the above direction, the respondents shall not initiate coercive action to recover the tax and finalise as quantified in the impugned assessment orders and the same shall be kept in abeyance.

8.Accordingly, the writ petitions are disposed of. No costs. Consequently, connected W.M.Ps. are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vga

To

1.The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi.

2.The Commercial Tax Officer (Enf.),
BTPS, Coimbatore.

3.The Deputy Commercial Tax Officer,
Enforcement, CEW-1,
Coimbatore.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

+1 cc to Mr.P.Rajkumar Advocate sr 71568

W.P. Nos.42625 to 42633 of 2016

pvs(co)
aa07/12/2016

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/