IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.5129 to 5134 of 2017 and
W.M.P.Nos.5423 to 5428 of 2017

Trade Links,
Represented by its Proprietor,
Om Prakash Khandenwal,
No.7-A, Venkatasamy Road,
R S Puram, Coimbatore - 641 002. ... Petitioner in all WPs

Vs.

The Assistant Commissioner (CT) FAC,
Mettupalayam Road Circle,
Coimbatore -18. ... Respondent in all WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN: 33632002698/2009-10, TIN: 33632002698/2010-11, TIN: 33632002698/2012-13, TIN: 33632002698/2013-14, TIN: 33632002698/2014-15, TIN: 33632002698/2015-16 dated 31.10.2016 and quash the same.

For Petitioner in all WPs : Mr.N.Inbarajan

For Respondent in all WPs : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent on either side, the writ petition is taken up for final disposal.

2.In all these writ petitions, the petitioner has challenged the orders of assessment under the Tamil Nadu Value Added Tax Act for the years 2009 - 2010 to 2015-2016 the input tax credit availed by the petitioner has been reversed on the ground that the purchases effected by the petitioner were from registration cancelled dealers and apart from reversing the input tax credit, the Assessing Officer also levied penalty. The Assessing Officer has referred to the objections given by the petitioner wherein the petitioner has stated that in certain cases, the cancellation of the registration certificate of the other end dealer was subsequent to their purchase and in another set of cases, the cancellation was not within their knowledge and therefore, they are innocent. However, this matter was not considered by the Assessing Officer in a proper perspective as no opportunity was given to the petitioners to appear in person and explain the facts. Therefore, on that ground the impugned orders are liable for interference. The second aspect is that with regard to levy of penalty under Section 27(4)(1) of the Act, the respondent in the impugned assessment orders has referred to the objection given by the petitioner stating that they claimed the ITC in good faith has the purchases were from registered dealers and they have not raised any false bills or vouchers. This submission was not denied by the Assessing Officer nor there was any material to show that the petitioner has produced false bills or vouchers. In such circumstances, the levy of penalty under Section 27(4)(1) of the Act is illegal.

3.In the light of the above, the Writ Petitions are allowed. The impugned orders in so far as it levy penalty on the petitioner - dealer is set aside and the matter is remanded to the respondent to consider only the aspect as to whether the petitioner had effected transactions from the vendors whose registration certificates were cancelled after the transactions were done by them or for any other valid reason. To that extent, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. It is made clear that the question of levy of penalty does not arise. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

Sgl
To
Assistant Commissioner (CT) FAC,
Mettupalayam Road Circle,
Coimbatore -18.

+1cc to Mr.N.Inbarajan,Advocate sr.46460
+1cc to The Special Government Pleader(Taxes),sr.46493

W.P.Nos.5129 to 5134 of 2017

rj(co)
ss(25/7/2017)