IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.5669 to 5671 of 2017
and
W.M.P.Nos.6071 to 6073 of 2017

M/s.Kalyan Jewellers India Pvt. Ltd.,
Rep. By its, Manager,
No.283, 5th Cross Street,
100 Feet Road,
Coimbatore. ... Petitioner in all W.Ps

vs

The Assistant Commissioner,
Commercial Taxes,
Gandhipuram Circle,
Coimbatore. ... Respondent in all W.Ps

Common Prayer:- Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ, Order or Direction in the nature of Writ of Certiorari calling for the records of the Respondent herein dated 30.01.2017 for the assessment years 2010 - 11, 2011-12, 2012-13 in TIN No.33272183607 and quash the same.

For Petitioner in all W.Ps: Ms.P.T.Asha
for M/s.Saravabhauman Associates

For Respondent in all W.Ps: Mr.K.Venkatesh
Government Advocate

C O M M O N O R D E R

Heard. Ms.P.T.Asha for M/s.Saravabhauman Associates, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent of either side, the writ petitions itself are taken up for disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act). In these Writ Petitions, the petitioner has challenged the assessment orders passed by the respondent under the provisions of TNVAT Act for the years 2010-2011, 2011-12, 2012-13, by exercising his power under Section 84 of the TNVAT Act.

3. On a careful reading of the impugned assessment orders, it is evidently clear that the respondent has proceeded to reverse the Input Tax Credit and levied the penalty without issuing prior show cause notice. Further, the petitioner's objections were not considered and an order reversing the Input Tax Credit under Sections 19(4) and 19(12) of the TNVAT Act has been made without assigning any reason. That apart, prior to imposing the penalty, the petitioner is entitled to an opportunity of hearing as required under Section 27(4) which was not granted. That apart, it is seen that the impugned orders have been passed invoking Section 84 of the Act and the respondent has not pointed out as to what is the mistake which he seeks to rectify and prima-facie, it appears that the impugned orders have been passed in order to get over the refund claim made by the petitioner, which was directed to be processed by orders of this Court in W.P.No.42769 of 2016, dated 09.12.2016. Thus, this Court is fully satisfied that the impugned assessment orders are in total violation of the principles of natural justice.

4. For all the above reasons, these writ petitions are allowed and the impugned assessment orders are set aside and the matter is remanded to the respondent for fresh consideration who shall afford an opportunity of personal hearing to the petitioner, allow the petitioner to submit further objections and re-do the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

rna
To
The Assistant Commissioner,
Commercial Taxes,
Gandhipuram Circle,
Coimbatore.

+1cc to M/s.Sarvabhuman Associates Advocates sr.52594
+1cc to Special Government Pleader sr.52643

W.P Nos.5669 to 5671 of 2017
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ss(17/8/2017)