IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.11161 to 11165 of 2017 and
WMP.Nos.12090 to 12099 of 2017

Tvl.V.K.Blacksmith,
Represented by its Proprietor
V.Kenipattu, Kiliyanur Post,
Vanur Taluk. ...Petitioner in all WPs

Vs

The Commercial Tax Officer (Main)
Tindivanam ...Respondent in all WPs

Prayer:Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his order of Assessment in TIN 33174722831/2010-11, 2012-13, 2013-14, 2014-15, 2015-16 dated 13.01.2017 and quash the same as being passed in contrary to the guidelines laid down in Notn.No.II(1)/CTRE/55(a-2)/92-Gazette dated 20.03.1992 without jurisdiction and authority of law and further direct the respondent to pass fresh orders of assessment by following the guidelines laid down in said notification.

For Petitioner : Mr.Ganesh Kanna

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.A.Ravichandran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of the respondent. With the consent of the learned counsel on either side, the writ petitions themselves are taken up for final disposal.

2. The petitioner, who was a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, has filed these writ petitions, challenging the

assessment orders under the said Act for the years 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16 respectively. The petitioner is a registered industry under the Khadi and Village Industries Commission and a Certificate of Registration has been issued on 09.11.2009, certifying that the petitioner has been financed under the Rural Employment Generation Programme (REGP) of the Khadi and Village Industries Commission for pursuance of Blacksmith and Carpentry Industry. Further, it was certified that the petitioner's unit is a New Unit, financed under REGP since 2006 and is engaged in manufacturing the product/service as per the norms prescribed by the Khadi and Village Industries Commission. The Certificate also contains that the petitioner's unit was approved for a maximum capacity of 5000 Units (Rs.85 lakhs); Steel Furniture and Fabrications - 3500 units and Wood Furniture and Carvings - 1500 units quintal/ton per annum. The Certificate was initially valid from 01.04.2008 to 31.03.2011 and further renewed from 01.04.2011 to 31.03.2014 and subsequently from 01.04.2014 to 31.03.2017.

3. The respondent - Assessing Officer issued notice to the petitioner stating that the petitioner has exceeded the sales turn over of Rs.85 lakhs as mentioned in the Certificate of Registration, issued by the Khadi and Village Industries Commission and that there is suppression of turn over and therefore, they propose to reject the claim for exemption and re-assess the petitioner to tax. The petitioner submitted their reply on 04.01.2017 stating that any monetary limit of production as specified by Khadhi and Village Industries Board is for the purpose of manufacture for the units only and will not cover the goods purchased and sold. In this connection, the petitioner relied upon another Certificate, dated 27.10.2015, which was subsequently given by the Khadi and Village Industries Commission without any monetary limit. Even as per the Certificate dated 27.10.2015, the petitioner is financed under the REGP since 2006. Enclosing the said Certificate, the petitioner requested the authority to drop the proceedings. The respondent, after receiving the reply has passed the impugned assessment orders observing that the Certificate has been issued by the Khadi and Village Industries Commission only on 27.10.2015 without any retrospective effect and the ceiling limit prescribed in the Certificate dated 09.11.2009 and renewed upto 31.03.2017 was not set aside or cancelled. Therefore, if the condition is lifted, it will cause evasion of tax. With these observations, the objection raised by the petitioner was overruled and the proposal in the notice was confirmed.

4. In my considered view, the respondent Assessing Officer has proceeded on a thorough misconception of facts. The Certificate of Registration issued by the Khadi and Village

Industries Commission is for the maximum production capacity of 5000 units (Rs.85 lakhs). The Certificate does not pertain to any limit on the sales turn over. Apart from that, the Certificate dated 27.10.2015 is without any such limit for maximum production capacity and the said Certificate further certifies that the petitioner Unit was a new unit financed under REGP since 2006 and is engaged in manufacturing product/service as per the norms prescribed by the Khadi and Village Industries Commission. Thus, the observation made by the respondent in the impugned assessment orders is solely based on presumptions and assumptions and there is no legal basis for the same.

5. For the above reasons, the impugned orders are liable to be set aside and accordingly, they are set aside. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer (Main)
Tindivanam.

+1cc to M/s.R.Ganesh kanna, Advocate, S.R.No.49337
+1cc to the Special Government Pleader (Taxes), S.R.No.49617

W.P.Nos.11161 to 11165 of 2017

RJ(CO)
CU(08/08/2017)