IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22225 and 22226 of 2017
and
W.M.P.Nos.23255 and 23256 of 2017

SVS Oil Mills,
Rep. By its Partner
S.V.Chandrapandian,
11, Thiruvottiyur High Road,
Thiruvottiyur,
Chennai - 19. ... Petitioner in both WPs

Vs.

The Assistant Commissioner (CT) FAC,
Kaladipettai Assessment Circle,
Chennai - 19. ... Respondent in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records on the file of the respondent in Ref:VAT 33431100029/2014-15 and VAT 33431100029/2015-16, dated 05.07.2017 respectively and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent, and with the consent of either side, the writ petitions itself are taken up for final disposal.

2. The petitioner is engaged in the manufacture of refined edible oil and vanaspathi. They were deemed to have been assessed for the years 2014-15 and 2015-16. The place of business of the petitioner was inspected by the Enforcement Wing

Officers on 17.08.2016 and the statement was recorded from the petitioner by the Enforcement Wing officers on 15.09.2016. The dispute in the instant case relates to what would the percentage of process loss in the manufacturing process undertaken by the petitioner. In the statement, it was alleged that the process loss quantified for 2014-15 is at Rs.52,44,003/- and for 2015-16, it is Rs.2,34,64,911/- and the rate of tax being 5% and the value was also computed.

3. The petitioner, while responding to the said allegation, had given their version which is also recorded by the Enforcement Wing Officers in the statement dated 15.09.2016. The petitioner has given a tabulated statement for both the years, namely, 2014-15 and 2015-16 and arrived at the average rate for 2014-15 at Rs.4,35,204/- and for 2015-16 at Rs.2,14,23,325/-. On receipt of the report/advise from the Enforcement Wing, the respondent issued notices dated 10.03.2017 proposing to revise the turnover and also levy the penalty.

4. In my considered view, notices dated 10.03.2017 are flawed for the reason that the respondent has merely proceeded as per the statement recorded by the Enforcement Officers without reference to the reply given by the petitioner before the Enforcement Officers. If, according to the respondent, the reply given and as recorded by the Enforcement Officers is not tenable, then he should have made a proper proposal in the show cause notices dated 10.03.2017. This is sufficient to hold that the notices are wholly illegal.

5. The petitioner, on receipt of the notices, submitted their objections on 17.04.2017 setting out what was the explanation which they offered before the Enforcement Officers and how the proposal is incorrect. Unfortunately, the respondent did not deal with the objections in a proper perspective, though he has extracted the entire objections in the impugned order. In the impugned order, the respondent has referred to the decision of this Court in the case of Interfit Techno Products Vs. Principal Secretary and Commissioner of Commercial Taxes. However, the said decision would be inapplicable in the present case, since the petitioner is not complaining about any uniform percentage of process loss. Thus, it is clear that the defective notice issued by the respondent has resulted in passing of the defective impugned orders. This is sufficient to interfere with the impugned orders.

6. Accordingly, for the reasons stated above, the writ petitions are allowed and the impugned orders are quashed. Consequently, the respondent is directed to inspect the petitioner's factory, ascertain the correctness of the stand taken by them before the Enforcement Officers regarding process

loss, examine the manufacturing process and then issue revised notice giving sufficient time to submit their objections and on receipt of the objections, afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT) FAC,
Kaladipettai Assessment Circle,
Chennai - 19.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.59791
+1cc to the Special Government Pleader(T), S.R.No.60171

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CS IV
CA(07/09/2017)