IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.22719 & 22720 of 2017
&
W.M.P.Nos.23810 and 23811 of 2017

M/s.India Tanning co.,
represented by its Partner
No.44/150/A Iqbal Road
Muslimpur
Vaniyambadi ... Petitioner in both the petitions

vs

The Commercial Tax Officer
Vaniyambadi ... Respondent in both the petitions

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN-33034641331/2014/2015 and TIN-33034641331/2010-11 and quash the assessment order dated 28.04.2017.

For Petitioner in both petitions : Mr.V.Sudakar

For Respondent in both petitions : Ms.Narmadha Sampath
Special Government Pleader

COMMON ORDER

Heard Mr.V.Sudakar, learned counsel for the petitioner and Ms.Narmadha Sampath, learned Special Government Pleader appearing for the respondent. With the consent on either side, the writ petitions themselves are taken up for final disposal.

2.The writ petitioner is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added

Tax Act, 2006 and Central Sales Tax Act, 1956. In these writ petitions, the writ petitioner has challenged the assessment orders under the Tamil Nadu Value Added Tax for the Assessment Years 2010-11 and 2014-15. So far as the Assessment year 2010-11 is concerned, the petitioner's case is that along with their objections, they had enclosed the abstract of the turnover and copies of the monthly returns, but the respondent has erroneously stated that the petitioner has not produced any proof along with the annexures to substantiate the same.

3. The learned counsel for the petitioner has referred to the copy of the annexures which have been filed in the typed-set of papers. The fact as to whether the annexures were appended to the objections filed by the petitioner is a factual matter, which matter the petitioner should agitate before the Assessing Officer and not by way of filing a writ petition. It appears that the petitioner, though received the impugned Assessment Order, did not prefer an appeal within the time permitted by the Act and they are before this Court after the period of limitation. According to the writ petitioner, if the abstract of the turnover and copies of monthly returns are perused, there would not be any cause for revision. Therefore, this Court is inclined to give a liberty to the petitioner to file an application under Section 84 of the Act and seek rectification of the assessment for the assessment year 2010-11.

4. So far as the assessment for the year 2014-15 is concerned, two issues had been pointed out in the revision notice dated 17.03.2017. One was relating to purchase from Registration Certificate cancelled dealers and other was relating to purchase omissions. The allegation regarding purchase from Registration cancelled dealers is concerned, the petitioner stated that the registration of the selling dealer was in force and to substantiate the same, the petitioner relied upon the return submitted by the said dealer for the month of June 2014. However, the respondent while completing the assessment pointed out that as per the web report, the registration was cancelled prior to the date of purchase and therefore, the Input Tax Credit claimed by the petitioner from registration cancelled dealer is liable to be reversed. The legal position which has been settled by this Court is that the retrospective cancellation of the registration cannot be a reason to deny Input Tax Credit for a purchasing dealer. There may be cases where a selling dealer might have suppressed the fact of cancellation of registration. So far as the purchase omission is concerned, the petitioner's explanation is that there is a small error in Annexure I filed by the petitioner wherein at Serial Nos.26 and 27, the name of the selling dealers had got interchanged, as a result of which there is a mismatch

of the TIN Number. This being a factual position, the petitioner has to raise the same before the Assessing Officer for which liberty is granted to the petitioner to file an application under Section 84 of the Act.

5. In the light of the above, W.P.No.22719 of 2017 is disposed of giving liberty to the petitioner to file an application under Section 84 of the Tamil Nadu Value Added Tax Act within a period of 10 days from the date of receipt of a copy of this order. On such application being filed, the respondent shall consider the same after affording an opportunity of personal hearing to the petitioner, pass a reasoned order on merits and in accordance with law within a period of two weeks from the date on which personal hearing is concluded. Till such time, the respondent shall not initiate any coercive action against the petitioner.

6. W.P.No. 22720 of 2017 is partly allowed and the assessment under the head purchase from registration cancelled dealer is set aside. With regard to purchase omission is concerned, the petitioner is granted liberty to file an application under Section 84 of the Act within a period of 10 days from the date of receipt of a copy of this order. On such application being filed, the respondent shall consider the same after affording an opportunity of personal hearing to the petitioner and pass a reasoned order on merits and in accordance with law within a period of two weeks from the date on which personal hearing is concluded. Till such time, the respondent shall not initiate any coercive action against the petitioner.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa
To
The Commercial Tax Officer
Vaniyambadi
+1cc to Mr.P.V.Sudakar, Advocate sr.61192
+1cc to Special Government Pleader sr.61337

W.P Nos.22719 & 22720 of 2017 &
W.M.P.Nos.23810 and 23811 of 2017

vgI(CO)
ss(22/9/2017)