IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP. Nos.23141 to 23143 of 2017
and
W.M.P. Nos.24246 to 24248 of 2017

Sri Krishna Refineries,
Represented by its Partner,
K.Karthikeyan,
No.74, Park Road,
Erode 638 003. ... Petitioner (in the all WPs)

Vs

The Assistant Commissioner (CT)
Park Road Assessment Circle,
Erode. ... Respondent (in the all WPs)

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari, to call for the records on the files of the respondents in TIN. No.33922860067/2011-12, 2012-13 and 2013-14 dated 23.06.2017 and quash the same.

For Petitioner :: Mr.R.Senniappan

For Respondents :: Mr.K.Venkatesh
Government Advocate

C O M M O N   O R D E R

Heard Mr.R.Senniappan, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing on behalf of the respondent. Since the learned Government Advocate has got instructions from the respondent, the writ petitions are taken up for disposal.

2.The petitioner in these writ petitions challenges the assessment orders passed by the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, (in short TNVAT Act, 2006) for the assessment years 2011-12, 2012-13 and 2013-14 dated 23.06.2017.

3.Before I venture to proceed to examine the correctness of the stand taken in the writ petitions challenging the impugned orders, I am constrained to make certain observations with regard to the manner in which the Assessing Officer has passed the impugned assessment order. On the first blush, the impugned order appears to be an order with elaborate reasons, but on a close scrutiny, it is seen that the assessing officer has reproduced the objections, directions issued by this Court in the earlier writ petition, the supplementary objections filed by the petitioner and intermingled her finding in certain places which are very difficult to decipher. In other words, a person who reads the impugned assessment order cannot immediately ascertain as to where the findings of the Assessing Officer has been rendered on the objections raised. The manner in which the order has been penned is incorrect and the assessing officer shall not adopt the very same approach in any of the future cases.

4. Admittedly, the petitioner has three types of transactions with regard to the import of oil and other products. According to them, three types of transactions are maintained separately and there are supporting documents. The petitioner, while filing their objections, stated that they have local sales, interstate sales as well as consignment sales and there was requirement to reverse input tax credit in so far as consignment sales are concerned that they ensured separate storage of the oil, which has even been mentioned in their objection dated 20/05/2017.

5.Thus, their contention is that there is a separate storage of oil which has been deliberately adopted by them, so that consequences which have arisen, pursuant to the show cause notice dated 06.04.2016 and 21.03.2017 does not arise.

6.In the objections dated 20.05.2017, the petitioner has specifically requested for grant of an opportunity of personal hearing. Unfortunately, the Assessing Officer did not make a fact finding exercise. What the Assessing Officer should have done is to cause an inspection of the petitioner's factory to ascertain the correctness or otherwise of the stand taken by the petitioner in their objections. If it has been done, substantial part of the problem could have been solved and the assessment could have been finalized. It is appears that the opportunity of personal hearing has not been granted to the petitioner. This being mandatory affects the very validity of the assessment order, which is a revision of assessment under Section 27(2) of the TNVAT Act.

7.Thus, for the above reasons, the writ petitions are allowed and the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall inspect the petitioner's factory after advance notice to the petitioner and re-do the assessment by passing a detailed speaking order specifically dealing with the objections and the findings recorded by her during the course of personal inspection.

8.With the above directions, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

maya/sai

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Park Road Assessment Circle,
Erode.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.72328
+1cc to the Special Government Pleader, S.R.No.71777

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MN(CO)
GN(13/11/2017)