IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos.33628 to 33633 of 2017
and
W.M.P.Nos.37202 to 337213 of 2017

M/s.Sri Muruga Hardware & Plywoods
Rep.by its Proprietor- K.Murugan
No.14, Krishnan Street
Tiruvannamalai 606 601. .. Petitioner in all W.Ps.

..Vs..

The Commercial Tax Officer
Tiruvannamalai -I, Circle
Tiruvannamalai,
Tiruvannamalai Distirct. .. Respondent in all W.Ps.

Prayer in all W.Ps. Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in his impugned proceedings made in TIN : 33434521316/2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, dated 27.10.2017 and to quash the same as illegal and contrary to the scheme of the Act.

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

C O M M O N O R D E R

Heard Mr.S.Rajasekar, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondent. With consent on either side, these Writ Petitions are taken up for disposal.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) was deemed to have been assessed under Section 22 (2) of the TNVAT Act. Subsequently, the respondent issued a revision notice, dated 25.09.2017. This

revision notice is, as a result of an inspection, which was conducted by the Enforcement Wing Officers, in the business premises of the petitioner on 22.02.2017; 23.02.2017 & 24.02.2017. The petitioner, in their objections, did not seek to canvass on the tax component, but raised their objections, regarding the high penalty, which was proposed and equal time addition. The respondent completed the assessment, by rejecting the objections of the petitioner. Hence, the petitioner is before this Court.

3. Considering the factual matrix involved in the matter and to ascertain as to whether the stand taken by the petitioner is justified or not, necessarily, these disputed questions of fact have to be adjudicated and re-adjudicated, and this cannot be done in a Writ Petition. Admittedly, the petitioner has an efficacious alternate remedy, by way of filing Appeal before the Appellate Authority, and it appears that, a portion of the tax has already been remitted by the petitioner for the respective assessment years. Therefore, the petitioner can very avail alternate remedy provided under the TNVAT Act, which is not only an effective remedy, but also efficacious remedy. However, this Court would point out that the Assessing Officer should not be solely guided by the observations made in the report submitted by the Enforcement Wing Officers, as it has been held, in the case of (Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Salem) reported in [(2006) 146 STC 642] that the Assessing Officer, is a quasi-judicial Authority, and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities.

4. In the aforementioned case, the Court found that, the Assessing Officer acted, as per the directions of the Higher Authorities and Enforcement Wing Officers, and the assessments were quashed. That apart, when complicated questions are involved, which require clarification from the assessee, it has been held that the assessee should be afforded an opportunity of personal hearing, and in this regard, it is relevant to take note of a decision of this Court, in the case of Nokia India Pvt. Ltd., Vs. Deputy Commissioner (CT) -IV, Large Tax Payers Union, Egmore, Chennai and others reported in [(2015) 79 VST 137 (Madras)], wherein, the Court held that, the power under Section 27(1) (a) of the Tamil Nadu Value Added Tax Act, 2006 is a power to revise an assessment, where, the Assessing Officer is empowered to assess escaped turnover and wrong availment of input-tax credit, giving wider power with extended period of limitation for reopening of assessment. It is quite distinct from the power conferred under Section 22 (4) of the Act, which deals with deemed assessment and procedure to be followed by the Assessing Authority, which is in pari materia with section 12

(2) of the Tamil Nadu General Sales Tax Act, 1959. Section 12 (2) of the 1959 Act and Sections 27 (1) (a) and 22 (4) of the 2006 Act all use the expression "best of its judgment''. Therefore, to state that the decisions of the Supreme Court rendered in the context of the 1959 Act could not be applied to the cases under the 2006 Act, would be incorrect, where, the question is, what is best judgment assessment. Where accounts books are available along with other records, there can be no ground for making best judgment assessment. If the quantum of turnover was based on the dealer's book, it cannot be treated as a best judgment assessment. But when the assessing officer comes to the conclusion that no reliance can be placed on the accounts maintained by the dealer, he proceeds to assess the dealer on the basis of his best judgment. The assessments made on the basis of the dealers' accounts and those made on best judgments basis are totally different types of assessment. Equal addition, being a guess work based on an estimate, unless, there is a material, it is not warranted. The fact that stocks are not supported by purchase bills cannot be a ground for equal addition. Rejection of the dealer's explanation as regards unaccounted purchases, which are subsequently accounted for would not justify equal addition. The equal addition being in the nature of penalty, it does not automatically follow that in ever case of non-disclosure, equal addition is warranted.

5. The above referred decision have been quoted in this order, so that, when the petitioner files Appeal before the Appellate Authority, the Appellate Authority shall bear in mind the legal principles laid down in the decision and then proceed to decide the petitioner's Appeal Petition on merits and in accordance with law.

6. In the light of the above, these Writ Petitions are disposed of, by giving liberty to the petitioner to file Appeals before the Appellate Authority, and if the Appeals are filed within a period of 30 days from the date of receipt of copy of this order, the Appellate Authority shall entertain the same, without rejecting it on the ground of limitation. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dna/sd

To

The Commercial Tax Officer
Tiruvannamalai -I, Circle
Tiruvannamalai
Tiruvannamalai Distirct.

+6cc to Mr.R.Hemalatha, Advocate Sr.No.92222
+1cc to Special Government Pleader SR.No.92420

sm:25.1.2018

W.P.Nos.33628 to 33633 of 2017