IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.2359 to 2361 of 2017, 2362 to 2365/2017, 2366 and 2367/2017, 2395 to 2398/2017 and
W.M.P.Nos.2344 to 2352 of 2017 and 2378 to 2381/2017

----

MURUGAVEL KNITS
REP. BY ITS PARTNER S.SENTHIL KUMARAN S/O.
SUNDARRAJAN NO.10 KONGU NAGAR 1ST STREET
TIRUPUR 641 607
... PETITIONER in WP.2359,2360,2361 of 2017

MURUGAPPA COTTONS,
REP. BY ITS PROPRIETOR S.SENTHIKUMARAN,
S/O.SUNDARRAJAN,NO.9/5,KONGU NAGAR,
1ST STREET, TIRUPPUR-641607.
.. PETITIONER IN WP.2362/17,2363/17,2364/17,2365/17

KIRTHINIDHI TEX
REP. BY ITS PROPRIETOR P.SUNDAR RAJAN AGE
75 YEARS S/O. PALANISAMY NO.9/5 KONGU
NAGAR 1ST STREET TIRUPUR - 641 607
... PETITIONER in WP No.2366 & 2367 of 2017

KANDAVEL AGENCY, REP.BY ITS PARTNER,
S.SENTHIKUMARAN,
S/O.SUNDARRAJAN,NO.10/28,KONGU NAGAR,
1ST STREET, TIRUPPUR-641607.
.. PETITIONER IN WP.2395/17,2396/17,2397/17,2398/17

Vs.

The Assistant Commissioner (CT) (FAC),
Kongunagar Circle,
Tirupur. ... Respondent in WP.2359,2360,2361,2362
2363,2364,2365,2366,2367,
2395,2396,2397 & 2398/17



WP No.2359 of 2017
Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in impugned orders in TIN : 33932445144/ 2014-2015 dated 19.12.2016 and quash the same as violative of principles of natural justice, ultra vires, arbitrary and unreasonable

WP No.2360 of 2017
Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in impugned orders in TIN : 33932445144/ 2015-2016 dated 19.12.2016 and quash the same as violative of principles of natural justice, ultra vires, arbitrary and unreasonable

WP No.2361 of 2017
Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in impugned orders in TIN : 33932445144/ 2016-2017 dated 19.12.2016 and quash the same as violative of principles of natural justice, ultra vires, arbitrary and unreasonable

WP No.2362 of 2017
Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in impugned orders in TIN : 33242444893/ 2013-2014 dated 19.12.2016 and quash the same as violative of principles of natural justice, ultra vires, arbitrary and unreasonable

WP No.2363 of 2017
Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in impugned orders in TIN : 33242444893/ 2014-2015 dated 19.12.2016 and quash the same as violative of principles of natural justice, ultra vires, arbitrary and unreasonable



WP No.2364 of 2017
Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in impugned orders in TIN : 33242444893/ 2015-2016 dated 19.12.2016 and quash the same as violative of principles of natural justice, ultra vires, arbitrary and unreasonable

WP No.2365 of 2017
Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in impugned orders in TIN : 33242444893/ 2016-2017 dated 19.12.2016 and quash the same as violative of principles of natural justice, ultra vires, arbitrary and unreasonable

WP No.2366 of 2017

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the files of the Respondent in impugned orders in TIN 33786360971/2015-16, dated 19.12.2016 and quash the same as violative of Principles of Natural Justice, Ultra vires, arbitrary and unreasonable

WP No.2367 of 2017

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the files of the Respondent in impugned orders in TIN 33786360971/2016-17, dated 19.12.2016 and quash the same as violative of Principles of Natural Justice, Ultra vires, arbitrary and unreasonable

WP No.2395 of 2017

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, Calling for the records on the files of the Respondent in impugned orders in TIN.33392444277/ 2013- 14 dated 19.12.2016 and quash the same as violative of principles of natural Justice, ultra vires, arbitrary and unreasonable

WP No.2396 of 2017

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari,Calling for the records on the files of the Respondent in impugned orders in TIN.33392444277/ 2014- 15 dated 19.12.2016 and quash the same as violative of principles of natural Justice, ultra vires, arbitrary and unreasonable

WP No.2397 of 2017

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, Calling for the records on the files of the Respondent in impugned orders in TIN.33392444277/ 2015- 16 dated 19.12.2016 and quash the same as violative of principles of natural Justice, ultra vires, arbitrary and unreasonable



WP No.2398 of 2017

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, Calling for the records on the files of the Respondent in impugned orders in TIN.33392444277/ 2016- 17 dated 19.12.2016 and quash the same as violative of principles of natural Justice, ultra vires, arbitrary and unreasonable

For Petitioner : Mr.T.V.Lakshmanan

For Respondent : Mr.K.Venkitesh,
Government Advocate

COMMON ORDER

Heard Mr.T.V.Lakshmanan, the learned Counsel for the petitioners and Mr.K.Vekitesh, the learned Government Advocate appearing for the respondent.

2. All these Writ Petitions have been clubbed together as the issue involved is common to all, though the petitioners are different.

3. All the petitioners are registered dealers on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT). Notices were issued to all the petitioners stating that they have claimed input tax credit on the purchase of cotton yarn from the dealers whose names were mentioned in the notices and on verification of the Departmental Website, it reveals that the selling dealers, who have issued sales bill without actual movement of goods, have not at all filed returns and paid the tax due. The impugned notices contain the name of the seller and their TIN Number, purchase value and the ITC Claim amount etc.

4. The petitioners filed their objections among other things stating that they have to cross-examine the sellers and the buyers and such opportunity should be provided to them.

5. Mr.T.V.Lakshmanan, the learned Counsel for the petitioners relied on various decisions of this Court to show that for the fault committed by the selling dealers, the petitioners should not be penalised.

6. The respondent, after receiving the objections, appears to have not given any opportunity of personal hearing. But, rejected the explanation offered by the petitioners stating that mere possession of the TIN Numbers by any unethical sellers in Karur will not discharge the burden of proof. Further, the respondent stated that mere payment of money through bank channels will not prove the movement of goods. It is also stated that the lorry vouchers were fabricated after the issuance of the notices and the petitioners contentions are far from truth.



7. The learned Counsel for the petitioners, after reiterating the factual position, submitted that the Input Tax Credit availed by the purchasers from the petitioners has also been reversed. Further, according to the respondent, if there was no transaction at all, such action could not have been taken against other end dealers who dealt with the goods from the petitioners.

8. In an identical situation in M/s.Shree Yarns rep. by its Proprietor A.D.Annamalai, 21, Kongunagar 1st Street, Tiruppur-641 607 vs. The Assistant Commissioner (CT),

Kongunagar Circle, Tiruppur-641 607 (W.P.Nos.1493 to 1498/2017), the Court after taking into consideration the various facts and circumstances remanded the matter for redoing the assessment by order dated 23.01.2017.

9. In the instant cases, I find that the respondent was of the firm view that the transactions are bogus transactions. In other words, there was nothing to show the movement of goods. Thus two issues arise for consideration. The first is whether there is a statutory requirement for the petitioners to prove the movement of the goods for being entitled to avail input tax credit. The second is whether the documents produced by the petitioners are sufficient to prove their eligibility for availing input tax credit. In the impugned orders, the respondent has disbelieved the lorry receipts which were produced by the petitioners and to that extent, the petitioners did not have an opportunity to contest the said finding by producing their evidence or cross-examining the parties whose cases were referred to by the Assessing Officer to disbelieve the receipts. In such circumstances, the respondent ought to have afforded an opportunity of personal hearing to the petitioners, before completing the assessment. Therefore, this Court is of the view that the assessment should be redone.

10. In view of all the above reasons, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remitted to the respondent for fresh consideration. The petitioner is directed to place before the respondent the materials on which they seek to rely in order to satisfy the respondent that the transactions are genuine and had, in fact, been undertaken notwithstanding the fact that the petitioners vendors/sellers have not filed returns and paid the requisite tax. Further, the petitioners are granted 15 days from the date of receipt of a copy of this Order to appear before the respondent and produce the necessary documents after which the respondent shall hear the petitioners and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS V )



/true copy/

Sub Asst. Registrar

tsi

To
The Assistant Commissioner (CT) (FAC),
Kongunagar Circle,
Tirupur.

+2ccs to Mr.T.V.Lakshmanan,Advocate sr.47316

+1cc to Special Government Pleader(Taxes)sr.46812

W.P.Nos.2359 to 2361/2017 etc. batch

ss(24/7/2017)