IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

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THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP.Nos.23603 and 23604 of 2017
&
W.M.P.Nos.24793 to 24796 of 2017

Aruna Enterprises Tamil Nadu (P) Ltd.,
Rep. by its Managing Director A.Arunachalam,
No.1473-A, Vellore Main Road,
Tiruvannamalai 606 601,
Tiruvannamalai District. ...Petitioner (Both petitions)

Vs.

The Assistant Commissioner (CT),
Tiruvannamalai - 1 Circle,
Tiruvannamalai,
Tiruvannamalai District. ...Respondent (Both petitions)

Prayer: Petitions under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari mandamus to call for the records on the file of the Respondent in his impugned proceedings made in TIN:33214523086/2013-14 and 2014-15 dated 31.07.2017 quash the same.

For Petitioner :: Ms.R.Hemalatha

For Respondents:: Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

Heard Ms.R.Hemalatha, learned Counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government pleader for the respondent.

2. With the consent of the learned counsel on either side, the writ petitions themselves are taken up for disposal.

3. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act in short). In these writ petitions, the petitioner has challenged the orders of assessment dated 31.01.2017 for the assessment years 2013-2014 and 2014-2015. Two issues arise for consideration in both the assessment years, namely with regard to the levy of tax on sale value on purchase suppression found with regard to check post extract and reversal of Input Tax Credit on purchases from registration cancelled dealers. The impugned assessment orders are orders passed after the matter was remanded by the appellate authority, the Deputy Commissioner (CT) Vellore, in AP.Nos.768 and 769/2016 dated 20.01.2017.

4. After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record,it is evidently clear that the assessing officer has totally ignored the directions issued by the appellate authority while remanding the matter for fresh consideration. At this juncture, it would be relevant to take note that for the following observations/directions issued by the appellate authority in her order dated 20.01.2017 with regard to the above referred two issues.

> "Therefore the assessment was not fairly made on this portion of assessment. Hence the assessment of actual suppression is set aside and remanded back for fresh disposal with the following instructions. The assessing authority to furnish the purchase list for the alleged amount including the supplier name, address, invoice number, sale amount etc. The investigation on the issuance of Form "C" also to be made through the Departmental Cell. The bank account of the dealer should be checked to find out the payment if any made to the dealers listed.
>
> ...
>
> The appellant is directed to produce the tax invoices and also prove of the payment made to those transactions. The assessing authority on the strength of the invoices produced shall initiate enquiry through the departmental source and prove that on the date of invoice the supplier was not registered. These investigation reports need to be made available to the appellant and after inviting objection if any, the assessment of reversal to be done if warranted. Therefore with this direction to both the parties the assessment of this portion of

purchase is set aside and remanded back for fresh disposal.”

5. In terms of the above directions, not only there is a direction to the petitioner to produce the documents and details but there is a pointed direction to the assessing authority to furnish the purchase list including supplier name, address, invoice number, sales amount, etc., to the petitioner. Further there is a direction to investigate on issuance of Form C also through Departmental Cell. The bank account of the petitioner was directed to be checked to find out payment, if any, to the dealers listed. After getting the information, the assessing officer was directed to make his own enquiry and proof of the claim of the nature of the transaction done. With regard to the issue relating to reversal of Input Tax Credit, there is a direction to the petitioner to produce the tax invoices and also prove the payments made for those transaction and the assessing officer, on the strength of the invoices, was to conduct an enquiry through departmental source and to prove that on the date of invoices, the supplier was not registered. Unfortunately, the respondent ignored the directions issued and completed the assessment in a summary manner. In fact, the assessment has been completed by giving remarks in a tabulated format, which does not show that any of the directions issued by the appellate authority has been complied with. The assessing officer is bound by the directive issued by the appellate authority and therefore, has to comply with such directions scrupulously. Having failed to do so, the only conclusion that could be arrived at is to hold that the impugned orders are unsustainable in law.

6. Accordingly, these writ petitions are allowed and the impugned orders are set aside and the matter is remanded back to the respondent for fresh consideration, who shall scrupulously follow the directions issued by the appellate authority in her order dated 20.01.2017, afford an opportunity of personal hearing and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (CT),
Tiruvannamalai - 1 Circle,
Tiruvannamalai,
Tiruvannamalai District.

+2CC TO M/s.R.Hemalatha, Advocate sr.63694

+1cc to Government Pleader sr.63843

WP.Nos.23603 and 23604 of 2017

ks(co)
ss(4/10/2017)