In the High Court of Judicature at Madras

Dated : 22.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.33907, 33910 & 33911 of 2017 &
WMP.Nos.37609, 37611 and 37612 of 2017

Tvl.Swathi Yarns, rep.by its
Proprietor A.Appachiappan ...Petitioner in WP.33907/2017

M/s.Ramakrishna Cotton Fabrics
rep.by its Partner Mr.R.Somasundaram ...Petitioner in WP. Nos.33910 & 33911/2017

Vs

1.The Commercial Tax Officer,
Main North Assessment Circle,
Tirupur. ...R1 in WP.No. 33907/2017

2.The Commercial Tax Officer,
Rural Assessment Circle, Tirupur. ...R1 in WP.Nos. 33910 & 33911/ 2017

3.The Commercial Tax Officer,
Gudalur Assessment Circle,
Gudalur. ...R2 in all the Wps

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the impugned proceedings of the first respondent respectively in (i) TIN 33362304565/2015-16 dated 18.8.2017, (ii) 33462383933/2014-15 dated 05.9.2017 and (iii) 33462383933/2015-16 dated 05.9.2017 and quash the same as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the principles of natural justice.

For Petitioners : Mr.P.Rajkumar
For Respondents : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. Since the petitioners have challenged the impugned assessment orders on a technical ground, by consent, the writ petitions are taken up for joint disposal.

2. The officials of the Enforcement Wing conducted an inspection in the place of business of the respective petitioners on 08.9.2016 and had taken cheques from the respective petitioners to the tune of Rs.30,40,461/- and Rs.12,62,654/- respectively, towards tax payable by the petitioners alleging that the dealers, with whom, the petitioners' suppliers had business transactions, were bill traders. The cheques issued by the respective petitioners were encashed, after which, the respective petitioners sent letters, all dated 21.7.2017, pointing out that the collection of such a huge amount of tax was incorrect and requested for refund of the amounts. Since those letters reached the respective first respondent, the revision notices respectively dated 01.8.2017, 18.8.2017 and 18.8.2017 came to be issued. In the revision notices, the respective first respondent referred to the petitioners' letters dated 21.7.2017. However, without affording sufficient opportunity, the respective first respondent passed the impugned orders confirming the proposal in the respective show cause notices.

3. Firstly, it has to be pointed out that there are several decisions wherein the action of the officials of the Enforcement Wing has been deprecated for collecting cheques as if they are for advance tax payment. In several writ petitions, orders have been passed directing the officials to return the cheques to the dealers. Apart from that, the reason assigned for reopening the assessments has to be tested, as it appears that there is no direct allegation that the respective petitioner is a bogus dealer or bill trader. For that reason, this Court is inclined to give an opportunity to the respective petitioners to go before the respective Assessing Officer.

4. Accordingly, the writ petitions are disposed of by directing the respective petitioners to treat the impugned orders as show cause notices and submit their objections within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respective first respondent shall afford an opportunity of personal hearing to the respective petitioners and redo the assessments in accordance with law. Till the above exercise is completed, no coercive action shall be taken against the respective petitioners for recovery of either tax or penalty, if any. Consequently Connected WMP's are closed.

Sd/-
Assistant Registrar(J)

//True copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Main North Assessment Circle,
Tirupur.

2.The Commercial Tax Officer,
Rural Assessment Circle,
Tirupur.

3.The Commercial Tax Officer,
Gudalur Assessment Circle,
Gudalur.

+2cc to Mr.P.Raj Kumar, Advocate SR.No.92450, 92449
+1cc to Special Government Pleader(T) SR.No.124

WP.Nos.33907, 33910 & 33911/2017&
WMP.Nos.37609, 37611 & 37612/2017

GN(18/01/2018)