IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.24022 to 24027 of 2017
&
W.M.P.Nos.25334 to 25339 of 2017

M/s.Vishal Interior,
Rep. by its Proprietor,
Old No.47, New No.100,
T.K.Mudali Street, Choolai,
Chennai-600 112. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT),
Choolai Assessment Circle,
Chennai-600 006. ... Respondent in all W.Ps.

Prayer in W.P.No.24022 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the connected records relating to the proceedings of the respondent herein made in TIN No.33410501744/2009-10 dated 21.01.20016 and quash the same.

Prayer in W.P.No.24023 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the connected records relating to the proceedings of the respondent herein made in TIN No.33410501744/2010-11 dated 21.01.2016 and quash the same.

Prayer in W.P.No.24024 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the connected records relating to the proceedings of the respondent herein made in TIN No.33410501744/2011-12 dated 21.01.2016 and quash the same.

Prayer in W.P.No.24025 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the connected records relating to the proceedings of the respondent herein made in TIN No.33410501744/2012-13 dated 21.01.2016 and quash the same.

Prayer in W.P.No.24026 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the connected records relating to the proceedings of the respondent herein made in TIN No.33410501744/2013-14 dated 21.01.2016 and quash the same.

Prayer in W.P.No.24027 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the connected records relating to the proceedings of the respondent herein made in TIN No.33410501744/2014-15 dated 21.01.2016 and quash the same.

For Petitioner : Mr.Manoharan S.Sundaram

For Respondent : Mr.K.Venkatesh
Government Advocate

C O M M O N O R D E R

Heard Mr.Manoharan S.Sundaram, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents. With the consent on either side these writ petitions are taken up for final disposal.

2.The petitioner has challenged the orders of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act") for the assessment years 2009-10 to 2014-15. The petitioner's case is that the pre-revision notice was served on the petitioner and the notice had been returned with postal endorsement "left". Consequently, the petitioner did not know about the assessment being completed and the impugned orders of assessment being passed. Since they had no notice of the proceedings and after having come to know that the impugned assessment orders have been passed, the petitioner was unable to obtain a copy of the orders and therefore, they had approached this Court in W.P.No.6733 of 2017, challenging the order dated 02.03.2017, whereby, the petitioner's request for issuing a copy of the assessment orders was rejected. The Writ Court by order dated 20.03.2017, disposed of the writ petition by directing the respondent to furnish the copy of the assessment order to the petitioner within a period of two weeks from the date of receipt of the said order, leaving it open to the petitioner to agitate the same before the competent forum.

3.The petitioner has challenged the impugned proceedings primarily on three grounds. Firstly, on the ground that the procedure required to be followed under Rule 19 of the TNVAT Act has not been followed in as much as the procedure contemplated therein for service of notice has not been adhered to.

4.Secondly, it is submitted that the impugned assessment orders have been solely based upon the report submitted by the Enforcement officials vide report dated 12.06.2015, wherein there is a positive direction to the Assessing Officer to implement the proposal and thus, there is no independent application of mind on the part of the Assessing Officer.

5.Thirdly, it is contended that the reason for disallowance of the claim by the petitioner is on the ground of details, which have been culled out from the official website of the Department, alleging that there is a mismatch between the returns filed by the petitioner and that of the data available in respect of other end dealer in the departmental website.

6.Considering the peculiar facts and circumstances of the case, this Court is of the view that the petitioner can be afforded one more opportunity to go before the Assessing Officer and put forth their objections as the pattern of assessment is identical to all the assessment orders and the revision of assessment itself is based upon report of the Enforcement Wing. However, for such reasons, this Court is not inclined to set aside the impugned orders, but would direct the petitioner to treat the impugned orders as show cause notices and submit their objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. Till such time, no coercive action shall be initiated against the petitioner for recovery of the tax and penalty as quantified in the impugned assessment orders. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT),
Choolai Assessment Circle,
Chennai-600 006.

+1cc to Mr.Manoharan S.Sundaram, Advocate, S.R.No.64378
+1cc to the Special Government Pleader(T), S.R.No.64646

W.P.Nos.24022 to 24027 of 2017

MP(CO)
CA(06/10/2017)