IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.397 to 399 of 2017
and
W.M.P.Nos.425 to 427 of 2017

M/s. Shri Vinayaga Fashions,
Rep.by its Proprietor,
Mr. Vivek Sultania,
No.44A & B, LIC Colony,
1st Street, College Road,
Tirupur - 641 601 ... Petitioner
(in W.P.Nos.397 to 399 of 2017)

Vs.

1. The Commercial Tax Officer (Main),
Tirupur(North)Assessment Circle,
Tirupur.
2. The Commercial Tax Officer,
Enforcement Group-I,
Coimbatore. ... Respondents
(in W.P.Nos.397 to 399 of 2017)

Prayer:

Writ petition No.397 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in TIN No: 33622310727/2013-14 and quash the impugned order dated 28.11.2016 as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act and against the principles of natural justice.

Writ petition Nos.398 & 399 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in TIN Nos: 33622310727/2014-15 & 33622310727/2015-16 and quash the impugned order dated 28.11.2016 as passed without issuing a notice for revision of assessment and so contrary to the provisions of the Tamil Nadu Value Added Tax Act and against the principles of natural justice, respectively.

For Petitioner: Mr.P.Rajkumar
(in W.P.Nos.397 to 399 of 2017)

For Respondents: Mr.K.Venkatesh
Government Advocate
(in W.P.Nos.397 to 399 of 2017)

C O M M O N   O R D E R

The petitioner is aggrieved by the orders of assessment passed in respect of the assessment years 2013-2014, 2014-2015 and 2015-2016. By consent of the parties, these main writ petitions themselves are taken up for final disposal at the admission stage itself.

2. Mr.P.Rajkumar, learned counsel appearing for the petitioner submitted that the impugned orders of assessment were passed without considering the petitioner's objection that under Section 5 r/w Rule 8(5)(d) of the Tamil Nadu Value Added Tax Act, 2006 and Rules made thereunder, the petitioner is liable to pay tax at 5% on the 70% of the sale value by leaving 30% towards labour charges. He further submitted that insofar as the assessment years 2013-2014 and 2014-2015, the Assessing Officer imposed penalty without there being any notice of proposal to that effect. Insofar as the assessment year 2015-2016, it is his contention that though such notice of proposal contains a penalty clause, it does not indicate as to which is the relevant provision in which the Assessing Officer has indented to impose such penalty. The learned counsel for the petitioner submitted that the petitioner was not given an opportunity of personal hearing, before finalizing fresh assessment and therefore, he submitted that the Assessing Officer has to re-do the assessment, after hearing the petitioner and considering their objections in detail.

3. The learned Government Advocate appearing for the respondents submitted that the petitioner without deducting TDS under Section 13 of the TNVAT Act, on the charges made for printing, stitching and embroidery job work entrusted to the Contractors, filed the return and therefore, the Assessing Officer has rightly imposed the tax liability and interest payment, after issuing notice of proposal. However, he fairly submitted that insofar as the assessment years 2013-2014 and 2014-2015, the Assessing Officer has not issued any notice proposing to impose penalty. Insofar as the assessment year 2015-2016 is concerned, the learned Government Advocate submitted that the notice of proposal contains the penalty clause and therefore, the petitioner cannot have any grievance.

4. Heard both sides.

5. The dispute between the parties is in respect of three assessment years viz., 2013-2014, 2014-2015 and 2015-2016. It is not in dispute that in respect of the assessment years 2013-2014 and 2014-2015, the notice of proposal did not contain the proposal for imposition of penalty. However, the fact remains that the Assessing Officer has imposed penalty in respect of those two assessment years. Therefore, it is evident that such imposition of penalty is in violation of principles of natural justice, more particularly, when the petitioner was not even given an opportunity of personal hearing as well before concluding the assessment order.

6. Insofar as the assessment year 2015-2016 is concerned, no doubt that the notice of proposal indicated penalty at 150%. As rightly pointed out by the learned counsel for the petitioner, it is not clearly indicated as to under what provisions, the said imposition is attempted to. The petitioner is also not given personal hearing before concluding the assessment.

7. While coming to the main issue viz., the non-deduction of the TDS, it is the contention of the petitioner that an assessment being one made under Section 5 of the TNVAT Act, r/w Rules 8(5)(d) Rules made thereunder, they are liable to pay 70% of the tax, at the rate of 5% leaving remaining 30% towards the labour charges. To that effect they have made their reply indicating their willingness to pay 70% of the tax. While passing the impugned orders of assessment, the Assessing Officer has not taken into consideration of the said contention of the petitioner. If an opportunity of personal hearing was given to the petitioner, though they would have been in a position to satisfy the Assessing Officer as to how they are justified in making such contention. In this case, the Assessing Officer has not given such opportunity. Therefore, considering all these aspects and considering the very fact that the imposition of penalty was passed in violation of principles of natural justice, I am of the view that the Assessing Officer has to re-do the assessment in respect of all the three assessment years, after giving an opportunity of personal hearing to the petitioner and considering their objections raised already. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after giving personal hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. It is open to the petitioner to raise additional objections, if any,

at the time of personal hearing. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

1. The Commercial Tax Officer
Tirupur (North)Assessment circle,
Tirupur.

2. The Commercial Tax Officer,
Enforcement Group, Coimbatore.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.42854
+1cc to the Government Pleader, S.R.No.43064

W.P.Nos.397 to 399 of 2017

VSN(CO)
RS(29/06/2017)