IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.Nos.2595 to 2598 2017

and WMP Nos.2564 to 2567 of 2017

M/s.KLN Motors Agencies Pvt. Ltd.,
Re. by its Managing Director,
Plot No.8, Guindy Industrial Estate,
Ekkattuthangal,
Chennai - 600 097. ... Petitioner in all W.Ps'

vs.

The Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
Chennai - 600 102. ... Respondent in all W.Ps'

Writ petitions filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records of the respondent in his proceedings in TIN/33201024932/2010-11, TIN/33201024932/2011-12, TIN/33201024932/2012-13 and TIN/ 33201024932/ 2013-14 quash the assessment order dated 22.12.2016 passed therein.

For Petitioner (In All W.Ps') : Mr.R.L.Ramani, Senior Counsel for Mr.B.Raveendran

For Respondent (In all W.Ps') : Mr.K.Venkatesh, Government Advocate.

COMMON ORDER

1. Issue notice. Mr.Venkatesh, accepts notice on behalf of the respondent.

2. With the consent of counsel for the parties, these writ petitions are taken up for final hearing and disposal.

3. The record shows that pursuant to an inspection conducted at the premises of the petitioner company on 01.10.2015, by the Enforcement Wing, several defects were pointed out concerning the Assessment Years 2010-2011 to 2013-2014. These defects, as per report of the Enforcement Wing, dated 31.03.2016 are 16 in number.

4. Consequent thereto, the respondent i.e., the Assessing Officer, issued a notice dated 09.08.2016, to the petitioner company. This notice was, admittedly, received by the petitioner company on 16.08.2016. The petitioner company, in response thereto, sent a letter dated 04.11.2016, to the respondent/Assessing Officer. By virtue of this letter, the petitioner company simply sought time up to 20.11.2016 to file a reply to the notices issued qua each of the aforementioned assessment years.

5. Admittedly, the petitioner company did not file its reply/objections to the notice dated 09.08.2016. The respondent/Assessing Officer, vide communication dated 24.11.2016, fixed time for hearing on 29.11.2016.

6. Admittedly, the petitioner's authorised representative attended the hearing, held on 29.11.2016 and as it appears, on that date, the authorised representative of the petitioner company sought seven (7) days time to file relevant documents.

6.1. The proceedings of Assessing Officer dated 29.11.2016, have been placed on record.

6.2. A perusal of the same, would show that time, as sought for by the petitioner's authorised representative, was granted and it was indicated, quite clearly, that in case, the needful was not done, orders could be passed based on the available records.

7. Concededly, the petitioner company neither filed its objection nor additional documents. Consequently, the respondent/Assessing Officer vide orders of even date i.e., 22.12.2016, passed the impugned assessment orders.

8. Mr.R.L.Ramani, learned Senior Counsel, who appears for the petitioner company says that the impugned orders have been passed without, the respondent/Assessing Officer, granting sufficient opportunity to the petitioner company. Learned Senior Counsel further submits that the impugned orders suffered from non application of mind, at least in respect of defect Nos.1 and 10, which was pointed out in the inspection report of the Enforcement Wing, to which, I have made a reference above.

8.1. It is the submission of the learned Senior Counsel that even though qua issues, where, documents were supplied during inspection, additions were made to the taxable turnover and tax was demanded vis-a-vis those defects as well. Learned Senior counsel, thus, in effect, seeks to file a petition under Section 84 of the TNVAT Act, 2006, so that, the error apparent, on the face of the record, pointed out before me, could be corrected.

9. Mr.Venkatesh, learned counsel appearing for the respondent, on the other hand, submits that adequate opportunity was granted to the petitioner company. Despite which neither objections were filed nor additional documents were filed. It is the learned counsel's submission that, therefore, the impugned orders ought not be disturbed.

9.1. Learned counsel further submits that insofar as the submissions have been advanced vis-a-vis defect Nos.1 and 10, as referred to in the Inspection report, if a petition under Section 84 of the TNVAT Act is filed, necessary orders can be passed by the respondent/Assessing Officer.

10. I have heard the learned counsel for the parties and perused the records.

11. Insofar as the first ground of challenge is concerned, I am not inclined to agree with Mr.R.L.Ramani. Adequate opportunity was given to the petitioner company to file an objections and/or additional documents.

12. In fact, time as sought for by the petitioner company was granted; final orders were passed only on 22.12.2016. Therefore, this submission of the learned Senior Counsel is unsustainable and therefore, is rejected.

13. As regards the other aspect, which is, that there was lack of application of mind. In so far as defect Nos.1 and 10 are concerned, the submission, prima facie, appears to be correct. In so far as defect No.10 is concerned, the learned Senior Counsel has taken me through the Inspection report, which is indicative of the fact that the documents with regard to sales return for the assessment years 2012-2013 to 2014-2015 were filed. In so far as the other assessment years are concerned i.e., 2010-2011 and 2011-2012 only an opportunity was sought to produce documents. Admittedly, these documents were not produced. It appears that the Assessing Officer over looked

the fact that the credit notes along with the cancelled invoices in respect of assessment years 2012-2013 to 2014-2015 were filed. Despite which, the Assessing Officer appears to have levied tax with respect to defect No.10. Similarly in respect of Defect No.1, as pointed out in the Inspection report, the stand of the petitioner is that necessary documents were furnished. Therefore, having regard to this aspect, I am inclined to grant leave to the petitioner to file a petition under Section 84 of the TNVAT Act, 2006. The petitioner company will do the needful within two (2) weeks from the date of receipt of a copy of the order. Pending disposal of Section 84 petition in respect of defects Nos.1 and 10, the tax imposed in each of the assessment years concerning these defects shall not be recovered.

14. At this stage, the learned Senior Counsel submits that, he would like to include, in Section 84 petition, issues with regard to the other defects, as well, which were pointed out in the Inspection report, based on which, pre-assessment notice was issued. To my mind, the petitioner cannot be bound down not to include other issues as well with a caveat, though, which is, that it would be open to the respondent/Assessing Officer to come to the conclusion whether or not they come within the ambit of errors apparent on the face of record.

14.1. In these circumstances, it is made clear that the recovery of tax with regard to the other aspects, i.e., apart from issues pertaining to defect No.1 and 10, is not stayed.

15. These writ petitions are disposed of in terms of the aforementioned direction. Resultantly, the connected applications are closed. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsm

To

The Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
Chennai - 600 102.

+1 CC to Mr.B.Raveendran, Advocate Sr.No.6841.

+1 CC to Government Pleader, High Court, Chennai Sr.No.7031.

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CP(CO)
KP(27.02.2017)