IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2017

Coram

The Hon'ble Mr. Justice T.S.Sivagnanam

Writ Petition Nos.26003 to 26007 of 2017
and
W.M.P.Nos.27585 to 27594 of 2017

W.P.No.26003 of 2017

M/s.Jindal Steels
Rep. by its Authorised Signatory -
Mukesh Surana

...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT),
Hosur (North) Circle,
Hosur,
Krishnagiri District.

...Respondent in all W.Ps.

Prayers in W.P.No.26003 of 2017 to 26007/17: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the Respondent made in TIN No.33703325206/2012-13 2013-14, 2014-15, 2015-16, 2016-17 respectively dated 17.07.2017 and to quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.K.Venkatesh
Government Advocate

C O M M O N O R D E R

Heard Mrs.R.Hemalatha, the learned counsel appearing for the petitioner, and Mr.K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondent. Since the issue involved and the parties in these Writ Petitions are one and the same, with the consent of the learned counsel appearing on either side, all these Writ Petitions were taken up together for disposal.

2. The petitioner is a registered dealer on the file of the respondent, under the provisions of both the Tamil Nadu

Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act) and Central Sales Tax Act, 1956. In these Writ Petitions, the petitioner has challenged the orders of assessment for the years 2012-13 to 2016-17.

3. Admittedly, the petitioner has an efficacious alternate remedy of filing an Appeal as against the impugned orders, but, without exhausting such an alternate remedy, they are before this Court, challenging the assessment orders.

4. The learned counsel appearing for the petitioner submitted that, the question of proving the movement of goods does not arise, and in the modern days, with the development on-line trading, and such other electronic methods, a transfer of title in movable property can take place both without the actual payment of the price and without actual delivery taking place. In support of such contention, reliance was placed on the decision of this Court, in the case of (Associated Cement Companies Ltd., Vs. Assistant Commissioner (CT) (FAC) Coimbatore and others) reported in (2009) 23 VS6 486 (Mad). Further, it is submitted that the observations made in the impugned orders that, there was no business activity done by the petitioner in the registered place of business of the petitioner are incorrect, since they have only one manager, and the place of business of the petitioner, as per the Registration Certificate, falls within the definition of the place of business, as defined under Section 2 (29) (iii) of the TNVAT Act.

5. The learned Government Advocate for the respondent has submitted that, in the impugned orders, the respondent has assigned reasons, as to why, the proposals in the notices, dated 26.04.2017, have been confirmed, and if the petitioner is aggrieved, then, they should file Appeal before the Appellate Authority.

6. On a perusal of the impugned orders, it is seen that, pre-revision notices were issued on 26.04.2017, pursuant to an inspection conducted by the Enforcement Wing Officers on 18.01.2016, which was a surprise inspection. The Officers found that the business place of the petitioner was locked and there was no business activity done in the place; no stock was available; no sufficient place was available for storing the stocks, (when it the petitioner's case that they are doing huge volume of business); the owner of the place Thiru. V. Raman, was enquired into and statement was recorded, who has stated that, no business activities done, and the rent is being paid by cheque through one Thiru.Renuka Kumar, and the whereabouts of the petitioner/dealer is not known to him; on verification of the monthly returns for the assessment year 2012-13, it was found that there was huge sales turnover of Rupees Thirty One Crore. Thus, on these allegations, pre-revision notices, dated

26.04.2017 were issued. The petitioner submitted their reply, and in the assessment orders, it has been stated that, the petitioner was given opportunity of personal hearing, in which, they have reiterated the stand taken in the reply, whereas, it is the submission of the learned counsel appearing for the petitioner that, no personal hearing was afforded to the petitioner.

7. Thus, considering the factual background of this case, this Court cannot conduct a roving enquiry to find out as to whether there was actual business activities done by the petitioner, in the registered place of the business or not, or can go into other factual aspects, as to whether the petitioner, without having sufficient area to stock the huge volume of iron and steel, was able to do business to the tune of Rs.31 Crores. Therefore, these factual issues have to be essentially agitated before the Appellate Authority and the same cannot not be done by way of Writ Petitions.

8. For all the above reasons, these Writ Petitions are dismissed as not maintainable, leaving it open to the petitioner to avail appellate remedy available to them under the Act. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

// True Copy//

Sub Assistant Registrar

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To.

The Assistant Commissioner (CT),
Hosur (North) Circle,
Hosur, Krishnagiri District.

+5cc to Mr.R.Hemalatha, Advocate SR.No.71510
+1cc to Special Government Pleader SR.No.71763

Writ Petition Nos.26003
to 26007 of 2017

SS(CO)
GN(27/11/2017)