IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.26102 TO 26105 OF 2017 (4 CASES)

AND

W.M.P.NOS.27729 TO 27732 OF 2017

Harshitha Tiles Marbles & Granites,
Rep. by its Proprietor R.Purushothaman,
213/3 A, Gingee Road,
Tindivanam, Villupuram District.

...Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer (Main),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam,
Villupuram District.

...Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the files of the respondent in TIN/33884723362/2011-2012, 2012-13 and 2013-14, dated 06.01.2016 2014-15, dated 30.06.2016 and 2013-14 dated 6.1.2016 respectively, and to quash the same as being illegal, invalid, without jurisdiction and violated the principles of nature justice and contrary to the law.

For Petitioner in all W.Ps : Mr.D.Vijayakumar

For Respondent in all W.Ps : Mr.K.Venkatesh Government Advocate (Taxes)

COMMON ORDER

Heard Mr.D.Vijayakumar, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate (Taxes), who accepts notice on behalf of the respondent. As the issue involved in these Writ Petitions and the parties are one and the same, with the consent on either side, they were taken up together for final disposal at the stage of admission itself.

2. The petitioner, who is a registered dealer, on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act') is aggrieved by the assessment orders for the years 2011-2012, 2012-13, 2013-14 and 2014-15, under the TNVAT Act.

3. It is seen that the impugned assessment orders were passed on 06.01.2016 and 30.06.2016 respectively, and the petitioner has neither exhausted the appellate remedy available under the Act, nor approached this Court earlier, questioning the validity and correctness of the assessments. The explanation, which is sought to be offered by the petitioner for the belated approach is that, they had entrusted their matter to a consultant, and the consultant had advised the petitioner, stating that, the issue pertaining to the mismatch is pending for consideration before this Court, and therefore, the Assessing Officer will not consider any objections, which may be filed by the dealer/petitioner, and the petitioner earnestly believing the advise given by the consultant, had not followed up the matter. Further, the petitioner was not aware of the fact that the mismatch issue has been decided by this Court, in the case of (JKM Graphics Solutions Pvt. Ltd., Vs. Commercial Tax Officer, Vepery Assessment Cirlce, Chennai) reported in 2017 99 VST 343 (Mad), and only after the petitioner took legal advise, they have approached this Court, by way of the present Writ Petitions.

4. I find that the turnover for each of the assessment years is minimal, and the tax, which has been demanded for the assessment years i) 2011-12 is Rs.9998/-, ii)for 2012-13 is Rs.5244/-, iii) for 2013-14 is Rs.3,55,062/- and iv) for 2014-15, is Rs.71,527/-.

5. Thus, I find that, except, for the assessment year 2013-14, the tax demanded for all other three assessment years are less than Rs.1,00,000/-. The explanation now offered by the petitioner before this Court is that the petitioner has got all the details to establish that the allegations made against them is not sustainable, and if the details of the web-report has been furnished to the petitioner with an opportunity to cross-examine the third party, then, they would be in a position to establish their case that those transactions have no connection with them, or, it was in the course of normal business practice, and there is no suppression of turnover.

6. Considering the peculiar facts and circumstances of the case, this Court is inclined to give one more opportunity to the petitioner to go before the Assessing Officer to substantiate their case. That apart, though the assessment orders were passed as early as on 06.01.2016 and 30.06.2016 respectively, it appears that the respondent has not taken any steps to recover the tax and penalty, as quantified in the impugned assessment orders. Therefore, the interest of the revenue will not be suffered, if the matter is remanded to the Assessing Officer for fresh consideration subject to certain conditions.

7. In the light of the above, all these Writ Petitions are disposed of, by directing the petitioner to pay 15% of the disputed tax for each of the assessment years, and such payment shall be effected within a period of three weeks from the date of receipt of a copy of this order. If the petitioner complies with this condition, then, they will be entitled to treat the impugned assessment orders as show cause notices, and submit their objections within 15 days thereafter, enclosing all relevant records to fortify their claim. If the petitioner requires any further information, they may approach the respondent for furnishing the same,which shall be furnished to the petitioner. After the explanation/reply is received in full form, the respondent shall afford an opportunity of personal hearing to the petitioner's Authorized Representative, and redo the assessment in accordance with law. Till the above exercise is completed, no coercive action shall be initiated against the petitioner for recovery of the balance tax and penalty, as quantified in the impugned assessment orders. It is made clear that, if the petitioner does not comply with the condition imposed by this Court, then, the respondent shall proceed further pursuant to the impugned assessment orders in accordance with law.

8. In the result, all these Writ Petitions are disposed of as stated supra. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To
The Commercial Tax Officer (Main),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam,
Villupuram District.

- 2 cc to M/s.D.Vijayakumar, Advocate Sr.No. 71810
- 1 cc to The Special Government Pleader(Taxes) Sr.No.72072

Writ Petition Nos.26102 to 26105 of 2017 (4 cases)

CO(KGK)
RRI 28/10/2017