IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.16284 to 16288 of 2017 and
WMP.Nos.17615 to 17619 of 2017

Asian Granito (India) Ltd.,
(Rep. by its authorized representative)
No.1/5, Chettiar Agaram Road,
Sivabootham Village,
Chennai - 600 095. ...Petitioner in all WPs.

Vs.

1.Assistant Commissioner (CT),
Nolambur Assessment circle,
No.176-B, M.T.H. Road,
Villivakkam, Chennai - 600 049.

2.Assistant Commissioner (CT),
Central Enforcement Wing-II,
Enforcement-II, Greams Road,
Chennai-600 006.

3.Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.

4.Government of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai-600 009. ..Respondents in all WPs.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned orders passed by the 1st respondent in TIN No.33751141078/2011-12/2012-13, 2013-14, 2014-15 and 2015-16 respectively dated 07.04.2017, quash the same.

For Petitioner : Ms.R.Charulatha

For Respondents : Mr.K.Venkatesh
Government Advocate
for R1 to R3

Ms.M.Lalitha
Government Advocate
for R4

C O M M O N   O R D E R

Heard Ms.R.Charulatha for M/s.Lakshmi Kumaran & Sridharan Attorneys, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate for respondents 1 to 3 and Ms.M.Lalitha, learned Government Advocate for the 4th respondent.

2. With the consent of the learned counsel on either side, the Writ Petitions themselves are taken up for final disposal.

3. The petitioner, who is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act and the Central Sales Tax Act, is before this Court, challenging the assessment orders for the years 2011-12 to 2015-16 under the provisions of the TNVAT Act. The place of the business of the petitioner was inspected by the officials of the Enforcement Wing on 29.11.2016 and it appears that a statement was prepared and the Depot Incharge/Manager of the petitioner was asked to sign the statement. However, the Manager of the petitioner refused to sign the statement. Therefore, a copy of the statement signed by the Assistant Commissioner (CT) of Central Enforcement Wing II, Chennai, was forwarded to the petitioner with an endorsement that the petitioner's representative refused to sign the statement. On receipt of the statement, the petitioner submitted a detailed representation dated 08.12.2016 addressed to the second respondent and the petitioner also brought to his notice that 14 documents were produced at the time of inspection and subsequently, on 18.11.2016, 4 documents were produced, which includes, Copy of Import Purchase register, Copy of Import Sales register, Summary of Import Purchase v/s sales and Summary of CST sales register. There was no reply received by the petitioner from the second respondent, but, they were served with notice by the first respondent, proposing to revise the petitioner's turn over based on the inspection conducted by the Enforcement Wing. The petitioner submitted a representation dated 21.02.2017, requesting one month time to submit their pending invoices. However, the petitioner had failed to go before the Assessing Officer, inspite of lapse of one month, which resulted in the respondent completing the assessment by passing the impugned orders confirming the proposals in the notice dated 30.12.2016.

4. The learned counsel appearing for the petitioner made elaborate reference to the factual details to demonstrate that in the impugned assessment orders, erroneous inflated figures have been mentioned, which have not been culled out from the books of accounts of the petitioner but has been arbitrarily

determined and tax has been levied at 14.5% by adding gross profit at 15%. The learned counsel for the petitioner further pointed out that in respect of an identical assessment under the provisions of Central Sales Tax Act, the petitioner filed writ petitions in W.P.Nos.16539 to 16544 of 2017 and the said Writ Petitions were allowed by order dated 30.06.2017 and the matters have been remitted to the respondent to afford an opportunity of personal hearing and to proceed in accordance with law.

5. Though the petitioner has not submitted their pending invoices in time, however, considering the manner in which they have reacted to the officials of the Enforcement wing and submitted their objection and their objection, having not been considered by the officials of the Enforcement wing and the manner in which assessment has been completed, I deem it appropriate that the matter should be remitted for fresh consideration by the Assessing Officer.

6. In the result, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remitted to the first respondent for fresh consideration with the following directions:-

i) The petitioner is directed to submit their objections to the notice dated 30.12.2016, within a period of 15 days from the date of receipt of a copy of this order.

ii) On receipt of the objections from the petitioner, the first respondent shall afford an opportunity of personal hearing and redo the assessment based on the explanation given by the petitioner and the documents that may be produced, without in any manner solely guided and influenced by the report of the Enforcement wing.

iii) Any coercive action initiated by the first respondent for recovery of tax and penalty has to be necessarily set aside and attachment, if any, shall stand raised.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

svki/nmm

To

1.Assistant Commissioner (CT),
Nolambur Assessment circle,
No.176-B, M.T.H. Road,
Villivakkam, Chennai - 600 049.

2.Assistant Commissioner (CT),
Central Enforcement Wing-II,
Enforcement-II, Greams Road,
Chennai-600 006.

3.Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.

4.The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George, Chennai-600 009.

+ 5 cc to M/s.Lakshmi Kumaran, Advocate,SR.52084

+ 1 cc to The Special Govt.Pleader(Taxes), SR.52490

W.P.Nos.16284 to 16288 of 2017

SKV(CO)
NR 01/09/2017