

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.16427 to 16429 of 2017

&

W.M.P.Nos.17767 to 17769 of 2017

Tvl.Vijayalakshmi Bricks,
Rep. By its Proprietor, S.Dhandapani,
No.199-B, Salem Main Road, Karimangalam Post,
Palacode Taluk,
Dharmapuri - 635 111. ...Petitioner in all WPs.

Vs.

The Commercial Tax Officer,
Palacode Assessment Circle,
Palacode,
Dharmapuri District. ...Respondent in all WPs.

Prayer in W.P.No.16427 of 2017:

Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI calling for the records on the files of the respondent in TIN.33393291475/2008-09 dated 02.06.2015 and quash the as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.16428 of 2017:

Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI calling for the records on the files of the respondent in TIN.33393291475/2011-12 dated 02.06.2015 and quash the as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.16429 of 2017:

Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI calling for the records on the files of the respondent in TIN.33393291475/2009-10 dated 02.06.2015 and quash the as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
(in all WPs.)

For Respondent : Mr.K.Venkatesh,
(in all WPs.) Government Advocate.

C O M M O N O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent. With the consent on either side, the Writ Petitions themselves are taken up for final disposal.

2.The petitioner is aggrieved by the orders of assessment passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the years 2008-09, 2011-12 and 2009-10. The impugned orders have been challenged on two grounds. Firstly, on the ground that the tax which can be levied on the sale of bricks is only at 4% and not at 5%. Secondly, it is contended that before demanding tax at the rate of 5%, the respondent did not issue any show cause notice, but directly issued a demand notice along with the penalty.

3.Therefore, it is submitted that the entire proceedings are vitiated. The impugned orders were passed on 02.06.2015, and therefore, this Court wanted to ascertain as to what happened in the interregnum, as to why the Assessing Officer did not take any action, though the assessments were completed and the demand was raised in June 2015. Accordingly, the matter was adjourned and the learned Government Advocate on instructions submitted that the petitioner dealer had been remitting tax regularly at the rate of 4% and also produced a copy of a Demand Draft drawn in favour of the Commercial Tax Officer, Palacode for Rs.3,50,000/- dated 04.03.2017.

4. Considering the fact that the petitioner did not have an opportunity to submit their objections to the demand of tax at 5% nor there was an opportunity to contest the levy of penalty, this Court is of the view that the matter should be remanded for fresh consideration.

5. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration with a direction to issue show cause notice to the petitioner and after affording an opportunity to the petitioner to submit their objections followed by the personal hearing, the assessment shall be re-done in accordance with law. It is made clear that the petitioner shall continue to remit the tax at the rate of 4% without any default till fresh orders of assessment are passed by the respondent. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr/pbn

To

The Commercial Tax Officer,
Palacode Assessment Circle,
Palacode, Dharmapuri District.

+1cc to Mr.R.Senniappan, Advocate, S.R.No. 48311

+1cc to the Spl.Government Pleader, S.R.No.48323

W.P.Nos.16427 to 16429 of 2017

KS (CO)
PSI 31.07.2017