IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.Nos.1790 and 1791 of 2017

and WMP No.1775 to 1778 of 2017

Tvl.Thirumalai Steels
represented by its Proprietor,
S.No.82/9BS,
Salem Main Road, Veppur,
Vridhachalam Taluk - 606 304. .. Petitioner in both the W.Ps

vs.

The Commercial Tax Officer (CT),
Virudhachalam. .. Respondent in both the W.Ps

* * *

Prayer in WP No.1790/2017 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, or any other appropriate writ to call for the records of the respondent in his order of assessment in TIN.33934426369/2013-14, dated 29.04.2016, and to quash the same as illegal and unconstitutional and direct the respondent to pass fresh orders after considering the input tax credit available in their credit and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WP No.1791/2017 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, or any other appropriate writ to call for the records of the respondent in his order of assessment in TIN.33934426369/2014-15, dated 29.04.2016, and to quash the same as illegal and unconstitutional and direct the respondent to pass fresh orders after considering the input tax credit available in their credit and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

* * *

For Petitioner in both W.Ps.	:	Mr.R.Ganesh Kanna
For Respondent in both W.Ps	:	Mr.S.Kanmani Annamalai Additional Government Pleader

COMMON ORDER

1. Issue notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondent.

1.1. With the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal.

2. Writ petition No.1790 of 2017 concerns Assessment Year (AY) 2013-2014, while writ petition No.1791 of 2017 concerns AY 2014-2015.

2.1. By virtue of the writ petitions, challenge is laid, though, to two separate orders, albeit, of even date, i.e., 29.04.2016.

2.2. By virtue of the order passed qua AY 2013-2014, the petitioner has been called upon to pay a tax amounting to Rs.1,68,729/-, and penalty in the sum of Rs.2,53,094/-.

2.3. In so far the AY 2014-2015 is concerned, the petitioner has been called upon to pay tax amounting to Rs.2,33,660/- and penalty equivalent to Rs.3,50,490/-.

3. A perusal of the impugned orders would show that the main plank, based, on which, the impugned orders are pivoted is that the information available to the Department, via their web report, and that, which was found reflected in the monthly returns filed by the petitioner, were at variance.

4. It it the petitioner's case that the web report and/or material on the basis of which, the respondent proceeded to pass the impugned orders were not supplied to him.

5. Learned counsel for the petitioner says that the respondent could not have proceeded to pass the impugned order, merely, on account of mismatch in information, in the monthly returns of the petitioner.

5.1. In support of this contention, learned counsel for the petitioner relies upon the following judgments :

(i).ALTHAF SHOES (P) LTD. VS. ASSISTANT COMMISSIONER (CT), VALLUVARKOTTAM ASSESSMENT CIRCULE, CHENNAI, 2012 (50) VST 179 (Mad) ;

(ii).SRI VINAYAGA AGENCIES VS. ASSISTANT COMMISSIONER (CT), VADAPALANI - I ASSESSMENT CIRCLE, CHENNAI AND ANOTHER, 2013 (60) VST 283 (Mad) ; and

(iii).INFINITI WHOLESALE LIMITED VS. ASSISTANT COMMISSIONER (CT), KOYAMBEDU ASSESSMENT CIRCLE, KOYAMBEDU, CHENNAI, 2015 (82) VST 457 (Mad).

6. Mr.S.Kanmani Annamalai, who appears for the respondent, says that the respondent ought to have supplied the material and information, which forms basis of the impugned order.

6.1. Furthermore, Mr.Annamalai, says, he cannot, but submit that in view of the judgments, referred to above, of this Court, mismatch in information cannot form the basis of assessment.

7. Thus, having regard to the record placed before me and the submission of the learned counsel for the petitioner, the impugned orders are set aside with a direction to the respondent to redo the assessment, albeit, in accordance with law, after supplying the requisite information and material to the petitioner.

7.1. Needless to pay, the respondent will afford personal hearing in the matter to the petitioner before passing a fresh order.

7.2. While passing a fresh order, the respondent will, in particular, bear in mind the judgments of this Court, referred to hereinabove.

8. The captioned writ petitions are is disposed of, in terms of the aforesaid direction. Resultantly, pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer (CT),
Virudhachalam.

+1cc to Mr.A. Ravichandran Advocate SR. 5551

+1cc to Special Government Pleader SR. 4880

W.P.Nos.1790 and 1791 of 2017

SAI(CO)
VR(2/03/2017)