In the High Court of Judicature at Madras

Dated : 06.11.2017

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The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.Nos.28219 & 28226 of 2017 & WMP.Nos.30339 & 30348 of 2017

Chennai Ferrous Industries
Ltd., rep.by Mr.R.Natarajan,
Managing Director ...Petitioner

Vs

The Assistant Commissioner (CT),
Gummidipoondi Assessment
Circle, No.38, Ganapathy Theater
Complex, II Floor, GNT Road,
Gummidipoondi-601201. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance Writs of Certiorari to call for the records relating to assessment notices TIN:33801705736/2014-15 and TIN:33801705736/2013-14 respectively, both dated 24.8.2017 issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mrs.Narmadha Sampath, SGP

COMMON ORDER

Mrs.Narmadha Sampath, learned Special Government Pleader accepts notice for the respondent.

2. The petitioner, which is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, has filed these writ petitions challenging the show cause notices issued by the respondent dated 24.8.2017 proposing to re-assess the turnover of the petitioner.

3. The petitioner's case was taken up for random scrutiny, pursuant to which, summons were issued to the petitioner to produce the books of accounts for both the assessment years, which the petitioner had complied with. On going through the books of accounts, the respondent pointed out that there are certain errors and issued the impugned assessment notices.

4. The learned counsel for the petitioner submits that the impugned notices are wholly without jurisdiction, as there is no provision under the State Act to recompute the turnover returned by the dealer in the monthly returns and in Form WW for the reason that the dealer did not make profit during a particular year. It is further submitted that once the assessment is completed under Section 22 of the State Act, then it can be reopened only under Section 27 of the State Act, which contemplates assessment of escaped turnover where the dealer fails to report certain turnover. Secondly, Section 27 of the State Act also contemplates a situation where the rate of tax adopted by the dealer is low. Therefore, there are only two possible

situations for re-assessment under Section 27 of the State Act.

5. It is his further submission that in the instant case, there is no escapement of turnover nor the rate of tax adopted by the petitioner is low. Hence, the assessment cannot be done under Section 27 of the State Act. It is his further submission that the respondent could not have invoked Section 24 of the State Act, since the parameters required to be fulfilled for invoking Section 24 of the State Act do not stand attracted.

6. In support of his contention, the learned counsel for the petitioner relies upon the decision of the Hon'ble Division Bench of this Court in the case of ***B.Ravi Vs. State of Tamil Nadu & another [reported in (1981) Vol.48 STC 274].***

7. I have heard the learned counsel for the petitioner elaborately.

8. As noticed above, the impugned proceedings are only assessment notices or show cause notices calling upon the petitioner to submit their objections. If, according to the petitioner, the impugned notices are unsustainable for certain reasons, either factual or legal, the petitioner should first canvass the same before the concerned Officer. Even in the decision of the Hon'ble Division Bench of this Court in the case of *B.Ravi,* the assessee

had exhausted all the remedies available under the provisions of the Statute and ultimately, the Hon'ble Division Bench of this Court considered the correctness of the decision of the Tribunal and on going through the facts, it was found that neither the Assessing Officer nor the Appellate Authorities have found any particular sale or purchase omission and it is only on the general impression that 20% of the profit should have been derived by the assessee that the account books were rejected and the taxable turnover was determined at best of judgment basis. Further, on facts, the Hon'ble Division Bench noticed that there was no evidence or comparable data available for adopting 20% as the normal gross profit for such transaction.

9. Thus, it is too early for this Court to examine as to whether the percentage arrived at by the respondent in the impugned notices is just and proper or was there any data available with the Assessing Officer. Therefore, the petitioner should first canvass all the factual and legal points before the respondent and participate in the personal hearing, which has been offered and then contest the matter on merits and if aggrieved, the petitioner has adequate and effective alternate remedy provided under the provisions of the Statute. There are no grounds to entertain the writ petitions at this juncture, as the impugned proceedings are only show cause notices.

10. For all the above reasons, the writ petitions are dismissed giving liberty to the petitioner to file their objections raising all factual and legal issues within a period of 15 days from the date of receipt of a copy of this order. The respondent is directed to decide the case on merits and proceed further in accordance with law after affording an opportunity of personal hearing without being, in any manner, influenced by the observations made in this common order. No costs. Consequently, the connected WMPs are also dismissed.

06.11.2017

Internet : Yes

To
The Assistant Commissioner (CT), Gummidipoondi Assessment Circle, No.38, Ganapathy Theater Complex, II Floor, GNT Road, Gummidipoondi-601201.

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T.S.SIVAGNANAM,J

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