IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.08.2017

CORAM

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

W.P. Nos.18221 to 18224 of 2017
and W.M.P.Nos.19808 to 19811 of 2017

M/s.Trisul Overseas,
represented by its Partner,
No.701/A,M.B.T.Road Cross,
Ranipet – 632 401,
Velllore District. .. Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT)
Ranipet. .. Respondent in all W.Ps

Prayer in all W.Ps: Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, or any other appropriate Writ, order or direction, call for the records of the respondent in TIN:33921351911/2012-13;2013-14;2014-15;2015-16, respectively and quash the assessment orders (all), dated 19.06.2017.

For Petitioner in all W.Ps : Mr.P.V.Sudakar
For Respondent in all W.Ps : Mr.K.Venkatesh
Government Advocate

---

C O M M O N O R D E R

Heard Mr.P.V.Sudakar, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent, in all Writ Petitions. With the consent of the learned counsel appearing on either side, the Writ Petitions themselves are taken up for final disposal at the admission stage itself.

2. The petitioner, who is a registered dealer on the file of the respondent, has filed these writ petitions, challenging the assessment orders for the years 2012-2013, 2013-2014, 2014-2015 and 2015-2016 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act").

3. Four issues were pointed out by the Assessing Officer in the Pre-Revision Notices, dated 17.03.2017. They being (i) invisible loss; (ii) mismatch of details, as culled out from

official website; (iii) discrepancy in the accounts; and (iv) plea regarding discount.

4. The petitioner had filed separate objections for all the four assessment orders, vide their objections, dated 29.05.2017. So far as the adoption of uniform percentage of invisible loss at 2%, the petitioner stated that such computation is incorrect, in the light of the decision of this Court, in this case of Interfit Techno Products Ltd., vs Principal Secretary / Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another, reported in (2015) 81 VST 389 (Mad).

5. With regard to the mismatch found with the details culled out from the Official Website of the department, it was submitted that full details were not furnished and if the same were furnished along with the names of the other end dealers, TIN No, Product purchased, etc., the petitioner would be able to demonstrate that they are not at fault and the Input Tax Credit availed cannot be reversed.

6. With regard to the discrepancy in the accounts and issue of discount, the petitioner explained the same in the manner as found by them to be the correct explanation. The respondent, while completing the assessments, appears to have not given an opportunity of personal hearing, but has completed the assessment by rejecting the petitioner's contention without giving due reasons.

7. So far as the adoption of uniform percentage of 2% towards invisible loss, all that the respondent has stated is that, wastage will be given due credit. The respondent did not take note of the directions issued by this Court, in the case of Interfit Techno Products Limited, cited supra, as to how the invisible loss has to be determined. With regard to the discrepancies, as culled out from the Official Website of the Department, this Court has time and again issued directions to the Assessing Officers to furnish full details to the dealers concerned and after conducting an enquiry in which the other end dealers should also be summoned, then only, the assessment could be made. This aspect also has not been taken into consideration by the respondent.



8. With regard to the discrepancy in the accounts and the matter pertaining to discount, the petitioner has given an explanation. However, the respondent has merely stated that their contention relating to Cooly tanning charges is not acceptable.

9. The respondent may be justified in not accepting the contentions raised by the petitioner, but, while rejecting the contentions, the respondent has to necessarily assign reasons as

to why he is not accepting the contentions. On a perusal of the impugned assessment orders, it is clear that no reasons have been assigned to the objections raised by the petitioner and the same has been outrightly rejected.

10. In Order to consider as to how the Assessing Officer has proceeded with the matter, the Court directed the learned Government Advocate to produce the Original files. From a perusal of the Original files, it appears that the pre-revision notices have been issued, pursuant to the directions issued by the Enforcement, vide communication, 23.02.2017. In the last line of the said communication, there has been a specific direction to the respondent / Assessing Officer to implement VS-13 proposal and send a copy of the order to the Office of the Enforcement.

11. This positive direction cannot be issued by the enforcement, as this will take away the power of the Assessing officer, who has to exercise his powers independently. At best, the report of the Enforcement Officer can give a cause of action to issue a Pre-Revision Notice, after which, it is for the Assessing Officer to consider the objections and act independently. If this procedure is not followed, then the very purpose of nominating the Officer, as the Assessing Officer of the dealer, will be lost, and that is not the intention of the statute.

12. Thus, it is clear that the respondent had no other option except to implement the proposal and that is obviously appears to have been the reason for passing such a cryptic assessment orders. Thus, for all the above reasons, the impugned orders are set-aside and the writ petitions are allowed and the matters are remanded back to the respondent, for fresh consideration, who shall furnish full details, as sought for by the petitioner, provide opportunity to file the additional objections and after conducting enquiry, afford an opportunity of personal hearing, and re-do the assessments in accordance with law. No costs, consequently connected Miscellaneous petitions are closed.



Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kv

To

The Assistant Commissioner (CT)
Ranipet.

+1 cc to M/s.P.V.Sudakar Advocate sr 58473
+1 cc to special Government Pleader sr 58944

W.P. Nos.18221 to 18224 of 2017
and
W.M.P.Nos.19808 to 19811 of 2017

ariv
aa01/09/2017