

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.18434 and 18435 of 2017
and
W.M.P.Nos.19997 to 20000 of 2017

M/s.R.P.P.Ready Mix,
rep.by its Partner, P.Selva sundaram,
312, Muillamparappu,
N.G.Palayam Post, Erode. ... Petitioner in both the W.Ps.

Vs

The Assistant Commissioner,
Erode Rural Circle,
Brough Road, Erode. ... Respondent in both the W.Ps.

W.P.No.18434 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33762904969/2012-13 dated 04.01.2016 and quash the same as illegal.

W.P.No.18435 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33762904969/2013-14 dated 04.01.2016 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2.With the consent of the learned counsel on either side, the writ petition is taken up for final disposal.

3.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short), is aggrieved by the assessment orders passed for the assessment years 2012-2013 and 2013-2014 by the respondent without considering the objections raised by the petitioner and the affidavits filed by the petitioner's customers to support their stand that the sale of ready-mix concrete was ex-factory and the delivery of the goods was the responsibility of the buyers.

4.When this case came up for admission on 20.07.2017, this Court directed the learned Government Advocate to accept notice for the respondent to ascertain two factors, namely, as to whether there are any private vehicles which transports these ready-mix concrete other than those owned by the manufacturers of these ready-mix

concrete, and secondly, a clarification as to why the assessing officer did not consider the affidavits filed by the petitioner's customers, stating that transportation of ready-mix concrete was their responsibility.

5.Today, when the case is taken up, the learned Government Advocate appearing for the respondent submitted that in and around Erode, there are private vehicles which are available for transporting these ready-mix concrete from the place of manufacture. It is also submitted that the assessing officer is ready and willing to consider the affidavits which have been filed by the petitioner.

6.In the light of the above statement, this Court is inclined to remit the matter back to the assessing officer to redo the assessment in accordance with law.

7.The learned counsel for the petitioner pointed out that there is no case for levy of penalty under Section 27(3)(b) of the TNVAT Act, since the entire turnover of freight charges were taken from the books of account and the assessments were made; there is no suppression of any turnover and hence there is no wilful non-disclosure of turnover warranting levy of penalty under Section 27(3) of the TNVAT Act. In support of such contention, the learned counsel for the petitioner placed reliance upon a decision of this Court in 104 STC Page 61.

8.Considering the above facts, this Court is of the view that the assessment should be redone and the respondent should consider as to whether this is a case for levy of penalty. Accordingly, the writ petitions are allowed the impugned orders are set aside and the matter is remanded back to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the authorised representative of the petitioner, consider all the affidavits filed by the petitioner's customers and after hearing the objections and perusing the records, redo the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No

31.07.2017

KM

To

The Assistant Commissioner,
Erode Rural Circle,
Brough Road, Erode.

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T.S.SIVAGNANAM, J.

KM



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