THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19138 to 19140 of 2010
and
M.P. Nos.1,1,1 of 2010

Sharon Veneers (P) Ltd.,
(Presently:Century PlyBoards (I)
LTD-Chennai Unit)
Rep.by its Joint Managing Director,
Vishnu Khemani,
No.12, Sriman Srinivasan Road,
Alwarpet, Chennai-600 018. ... Petitioner in all WPs

Vs.

The Assistant Commissioner (CT),
Mylapore Assessment Circle,
46, Greenways Road,
Chennai-600 028. ... Respondent in all WPs

Common Prayer: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the files of the respondent herein in TNGST.0700342/2003-2004 dated 19.07.2010 in WP.No.19138 of 2010; TNGST.0700342/2004-2005 dated 29.06.2010 in WP.No.19139 of 2010 and TNGST.0700342/2005-2006 dated 29.06.2010 in WP.No.19140 of 2010 and quash the same.

For Petitioner in all WPs : Mr.N.Inbarajan

For Respondent in all WPs : Mr.S.Kanmani Annamalai, AGP(Taxes)

COMMON ORDER

The petitioner in all the writ petitions, is a Registered Dealer on the file of the respondent under the provision of the Tamil Nadu General Sales Tax Act, 1959, is aggrieved by the assessment orders dated 29.06.2017 and 19.07.2010.

2.Mainly two contentions have been raised before this Court to state that the impugned assessment orders are unsustainable. Firstly, when the Assessment Officer did not have any independent material, except some materials gathered from the Central Excise Department and this should not have been the basis for passing the impugned orders. Secondly, the respondent erroneously drew an influence that the petitioner had not accounted for the transactions without noting that they do not have any independent material to arrive at such a conclusion.

3.So far as the 1st aspect is concerned in my considered view, the respondent has used the materials received from the Central Excise Department to be the basis for initiation of the proceedings by issuing notice dated 12.03.2009. It is not as if the respondent has straightaway proceeded and passed the orders and issued demands based on the material received from the Central Excise Department. Therefore, the materials received from the Central Excise Department has been treated to be a source report based on which action under the Provisions of Tamil Nadu General Sales Tax Act has been initiated. Therefore, I find there is no error on the said aspect.

4. With regard to the second contention, I find that entire material revolves on the disputed question of fact.

5. The learned Additional Government Pleader would contend that the petitioner has accepted the guilt and given the statements. However, these disputed questions cannot be gone into in a writ petition and the petitioner has to necessarily avail the appellate remedy under the Act.

6. This Court is conscious of the fact that the writ petition has been pending from the year 2010 and it has been held that when the matters are pending before the Court for a considerable long period the party should be directed to avail the alternative remedy. However, in this case a slight departure has to be taken from the normal rule.

7. Firstly, the matter arises under a Taxation Statute. Secondly, the issues raised by the petitioner are all disputed questions of fact and the disputes are not a superficial dispute but serious disputes. Therefore, essentially the petitioner should be relegated to the appellate remedy available under the Act.

8. At the time when the writ petitions were entertained an order of interim stay was granted subject to condition that the petitioner should pay 25% of the tax demanded within the time frame. The petitioner has complied with the said condition on the part of the respondent, they have not filed any counter affidavit, though the writ petitions have been pending since

2010 and there is an order of interim stay.

9. Therefore, this Court is inclined to issue appropriate direction so that the petitioner can approach the Appellate Authority simultaneously not exposing the petitioner to any further financial liability pending disposal of the appeals.

10. In the result, the writ petitions are disposed of, by directing the petitioner, in each of the above petitions, to file the appeal(s) before the Appellate Assistant Commissioner (CT-IV), Chennai 108 within a period of 30 days from the date of receipt of a copy of this order. If such appeal(s) is/are filed within the time permitted, the Appellate Authority shall entertain the appeal(s) without reference to the limitation and decide the same on merits and in accordance with law. As the petitioner has complied with the conditional interim order dated 20.08.2010 and paid 25% of the disputed tax for each of the assessment years, the Appellate Authority shall not insist for payment of any further sum towards pre-deposit for hearing the appeal(s) and shall proceed to decide the matter(s) on merits and in accordance with law. Till the appeal(s) is/are disposed of, no coercive action should be initiated against the petitioner. Needless to state that the Appellate Authority shall decide the matter(s) independently and uninfluenced by any of the observations made in this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

sk/maya

To

The Assistant Commissioner (CT),
Mylapore Assessment Circle,
46, Greenways Road,
Chennai-600 028.

+1 CC to Mr.N. Inbarajan, Advocate sr 87622.

W.P.No.19138 to 19140 of 2010

SP(02/01/2018)