IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.40059 to 40062 of 2016 &
W.M.P.Nos.34103 to 34110 of 2016

M/s.Vijay Agencies,
Rep. by its Proprietor, C.Vijayan,
No.259, K.V.S.Complex,
Arani Road, Virupatchipuram,
Vellore, Vellore District. ... Petitioner in all WPs.

Vs.

Commercial Tax Officer,
Vellore (Rural),
Vellore, Vellore District. ... Respondent in all WPs.

Prayer in W.P.No.40059 of 2016: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN 33704322948/2007-08 dated 26.09.2016 and quash the same.

Prayer in W.P.No.40060 of 2016: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN 33704322948/2008-09 dated 26.09.2016 and quash the same.

Prayer in W.P.No.40061 of 2016: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN 33704322948/2009-10 dated 26.09.2016 and quash the same.

Prayer in W.P.No.40062 of 2016: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN 33704322948/2011-12 dated 26.09.2016 and quash the same.

For Petitioner
(in all WPs.) : Mrs.R.Hemalatha
For Respondent
(in all WPs.) : Mr.K.Venkatesh,
Government Advocate.

COMMON ORDER

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent. With the consent on either side, the writ petitions themselves are taken up for final disposal.

2.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), has approached this Court by challenging the orders of assessment for the years 2007-08, 2008-09, 2009-10 and 2011-12.

3. The petitioner's case is that in respect of the assessment years 2007-08, 2008-09 and 2011-12, as they are factual, they may be permitted to approach the Appellate Authority by way of filing an appeal. However, with regard to the assessment made for the year 2009-10 is concerned, it is submitted that the respondent has completed the assessment based on the alleged statement recorded by the Enforcement Wing Officials, which has been specifically denied by the petitioner in the reply to the show cause notice dated 18.07.2016. Further, it is submitted that any statement recorded before the Enforcement Wing cannot be put against the petitioner while completing the assessment, since the petitioner has submitted a reply to the show cause notice, which has been considered by the Assessing Officer in an independent manner.

4.In my considered view, the observations made by the Assessing Officer in the impugned assessment order dated 26.09.2016 for the year 2009-10 also involves factual issues and therefore, the petitioner should file appeals in respect of all the four assessment years, since all the four assessment orders are of a result of single inspection conducted by the Enforcement Wing Officials of the Department dated 19.07.2011. However, this Court wish to clarify that even assuming the dealer or his authorized representative has given a statement before the Enforcement Wing Officer of the Department, that cannot be mechanically adopted by the Assessing Officer, when the petitioner has put-forth their objections to the proposal made in the show cause notice. In other words, the role of the Assessing Officer is to act as an independent authority uninfluenced by any observations or alleged admissions and should adjudicate the matter based on the materials placed by the petitioner/ dealer. This clarification would be sufficient to protect the interest of the petitioner while filing an appeal before the Appellate Authority.

5.In the light of the above, these writ petitions are disposed of, giving liberty to the petitioner to file appeals before the Appellate Authority and if such appeals are filed within thirty days from the date of receipt of a copy of this order, the Appellate authority shall not reject the appeals on the ground of limitation, but to proceed to consider the same in accordance with law subject to the petitioner complies with the conditions with regard to pre-deposit. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

abr/rkm

To

Commercial Tax Officer,
Vellore (Rural),
Vellore, Vellore District.

+1 cc to the Special Government Pleader (Taxes)
sr 50097

W.P.Nos.40059 to 40062 of 2016

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