IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.4080 & 4081 of 2018
and W.M.P.Nos.5008 & 5009 of 2018

M/s.India Piston Limited,
Rep. by its Chief Financial Officer,
Huzur Gardens,
Sembium, Chennai-600 011 .... Petitioner in both W.Ps.

vs.

The Assistant Commissioner (CT),
Sembium Assessment Circle,
15 & 16, 100 Feet Road, Malligai Avenue,
Kolathur,
Chennai-600 099. ... Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent herein in CST/27502/2007-08 and 2008-09 respectively and to quash the orders dated 01.02.2018 issued therein.

For Petitioner : Mr.R.L.Ramani,
(in both W.Ps.) Senior Counsel
for Mr.B.Raveendran

For Respondent : Mrs.G.Dhanamadhri,
(in both W.Ps.) Government Advocate (Taxes)

C O M M O N O R D E R

Heard Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent. With consent on either side, these writ petitions are taken up for final disposal.

2. Since the respondent has given parawise instructions to the learned Special Government Pleader vide letter dated

30.05.2018, the Court took up the writ petition for hearing. The petitioner has filed these writ petitions challenging the impugned assessment order dated 01.02.2018, and the impugned assessment notice dated 01.02.2018, on the short ground that the assessment for the relevant years is deemed to have been completed as on 30.06.2012 and thereafter, the respondent has no power to pass an original assessment order.

3. A reading of Section 22(2) of the Tamil Nadu Value Added Tax, 2006 (for short "the TNVAT Act") more particularly, the proviso under sub-Section 2 states that in respect of such returns submitted for the years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11, on which assessment orders are not passed shall be deemed to have been assessed on the 30th day of June 2012.

4. The statutory time limit prescribed cannot be extended by the respondent. However, that does not mean that the respondent denude of power. If it is found that the returns filed and the exemption claimed to be incorrect, he can take action by exercising his power under Section 27 of the TNVAT Act.

5. The parawise comments given by the respondent touch upon the merits of the matter. However, the respondent has wrongly stated that they have not passed any assessment order under the TNVAT Act.

6. What is to be noted is that on and after 30.06.2012, the petitioner is deemed to have been assessed for the relevant year, viz., 2007-08. Therefore, the question of passing a separate assessment order does not arise. However, it was well open to the assessing officer to pass such an order before the cut-off date 30.06.2012 and not thereafter. If the respondent is of the view that the rate of tax as mentioned in the return and the amount of tax paid is incorrect or for certain other reasons, the returns cannot be processed, then the only remedy is to reopen the assessment and, the impugned proceedings cannot be given effect to.

7. So far as the assessment year 2008-09 is concerned, the mistake committed by the respondent is to issue a notice for provisional assessment. This could not have been done by the respondent, in the light of the above reasons.

8. In the result, these writ petitions are disposed of giving liberty to the respondent to initiate reopening proceedings, if she deems fit and appropriate to do so and the respondent is directed not to enforce the order dated 01.02.2018 and the notice dated 01.02.2018 for the assessment years 2007-08 and 2008-09 respectively. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr
To

The Assistant Commissioner (CT),
Sembium Assessment Circle,
15 & 16, 100 Feet Road, Malligai Avenue,
Kolathur, Chennai-600 099.

+1cc to the Special Government Pleader Sr.35959

W.P.Nos.4080 & 4081 of 2018

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srg 26/06/2018