IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.04.2018
CORAM
THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
W.P.Nos.6148 to 6151 of 2018 &
W.M.P.Nos.7575 to 7578 of 2018

M/s.S.S.Manufacturing Pvt. Ltd.,
No.127, Mettupalayam Main Road
Panrutti Village, Sriperumpudur Taluk
Kancheepuram-631 604
Rep. by its Senior Executive/
Authorized Signatory
R.Vinayagamoorthy ... Petitioner in all WPs

v.

The Assistant Commissioner (CT)
Oragadam Assessment Circle
No.3/177, 2nd Floor, Bazaar Street
Hajiyar Nagar, Padappai- 601 301 ... Respondent in all WPs

W.P.No.6148 of 2018: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records culminated in the respondent's impugned order dated 09.02.2018 in ref. TIN:33461663825/2008-09, demanding Rs.40,25,072/- as interest due, annexing Form-O for Rs.23,06,632/- as balance of tax and Form RR Rs.40,25,072/- as penalty and quash the same and consequently direct the respondent to pass a revised assessing order in accordance with Section 84 of the Tamil Nadu Value Added Tax, 2006.

W.P.No.6149 of 2018: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records culminated in the respondent's impugned order dated 09.02.2018 in ref. TIN:33461663825/2007-08, demanding Rs.17,46,958/- as interest due, annexing Form-O for Rs.9,21,878/- as balance of tax and Form RR Rs.17,46,958/- as penalty and quash the same and consequently direct the respondent to pass a revised assessing order in accordance with Section 84 of the Tamil Nadu Value Added Tax, 2006.

W.P.No.6150 of 2018: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records culminated in the respondent's impugned order dated 09.02.2018 in ref. TIN:33461663825/2010-11,

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demanding Rs.55,519/- as interest due, annexing Form-O for Rs.38,422/- as balance of tax and Form RR Rs.55,519/- as penalty and quash the same and consequently direct the respondent to pass a revised assessing order in accordance with Section 84 of the Tamil Nadu Value Added Tax, 2006.

W.P.No.6151 of 2018: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records culminated in the respondent's impugned order dated 09.02.2018 in ref. TIN:33461663825/2012-13, demanding Rs.21,761/- as interest due, annexing Form-O for Rs.14,230/- as balance of tax and Form RR Rs.21,761/- as penalty and quash the same and consequently direct the respondent to pass a revised assessing order in accordance with Section 84 of the Tamil Nadu Value Added Tax, 2006.

For Petitioner : Mr.R.Prabhakaran
in all the writ petitions

For Respondent : Ms.G.Dhanamadhri
in all the writ petitions Government Advocate

COMMON ORDER

Heard Mr.R.Prabhakaran, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT Act'), has filed these writ petitions challenging the Assessment Orders under the said Act for the Assessment years 2007-08, 2008-09, 2010-11 and 2012-13.

3.The only issue in all these writ petitions is liability under Section 13 of the TNVAT Act, which deals with deduction at source in works contract. The revision notices came to be issued to the petitioner for all the Assessment years pursuant to the audit inspection conducted in the business premises of the petitioner on 20.09.2016. The petitioner submitted their objections to the said revision notices and reiterated the stand taken by them in their earlier reply dated 14.10.2016 and 07.11.2016. The sum and substance of the reply being that the purchases effected by them was for their own use. Though such a stand was taken, it was not clearly mentioned in the objections. But, there were annexures along with the objections dated 14.10.2016, which dealt with the liability under Section 13 of the TNVAT Act.

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4. The respondent does not dispute the fact that the objections have been received. But it is the case of the respondent that the petitioner has not produced necessary forms such as Form R/T/S. These forms are required to be produced as per Rule 9 of the TNVAT Rules, 2007. Sub-Rule (1) of Rule 9 sets down the circumstances when 'Form R' is required to be produced. Sub-Rule (2) of 'Rule 9' sets down the circumstance when 'Form S' is required to be produced. Even assuming that the petitioner has not produced those forms, that by itself will not be a ground to deny the petitioner the relief which he is entitled to nor to draw an adverse inference. All these forms are meant for facilitating the smooth administrative functioning. Even assuming that the necessary forms were not produced earlier, still it is well open to the Assessing Officer to ascertain the truth and the nature of transaction. This alone shall be a proper assessment procedure.

5. In the light of the above, this Court is of the view that assessment should be redone as it is a common issue in respect of the Assessment years 2007-08, 2008-09, 2010-11 and 2012-13.

6. In the result, all these writ petitions are allowed and the impugned assessment orders are set aside and the respondent is directed to re-do the assessment under the head 'liability' under Section 13 of the TNVAT Act after affording an opportunity of personal hearing to the petitioner and pass a reasoned order on merits and in accordance with law. Learned counsel appearing for the petitioner submitted that the petitioner has all the necessary forms and records in their possession. If that is so, the petitioner is at liberty to produce all the forms and records before the Assessing Officer, who shall consider the same during the course of personal hearing. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rj

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To

The Assistant Commissioner (CT)
Oragadam Assessment Circle
No.3/177, 2nd Floor, Bazaar Street
Hajiyar Nagar, Padappai- 601 301

+2cc to M/s.R.Prabhakaran, Advocate SR.No.26487
+1cc to the Government Pleader SR.No.26882

GP(CO)
sm:23.4.2018

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