IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.06.2018
CORAM
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.4220 to 4223 of 2018 &
W.M.P. Nos.5193 to 5196 of 2018

Sakthi Oil Refineries
Rep. by its Partner
V.R. Jayakumaran
No.11, T.H.Road
Thiruvotriyur, Chennai 19 ...Petitioner in all WPs

v.

1 The Assistant Commissioner(CT)
Kaladipet Assessment Circle
703, T.H.Road
Thiruvottiyur
Madhavaram
Chennai - 600 019

2 The Commercial Tax officerGroup I
Enforcement (North)
Chennai - 6 ...Respondent in all WPs

W.P.No.4220/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the First Respondent herein in VAT 33341101000/2013-14, dated 31.01.2018 and quashing the same.

W.P.No.4221/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the First Respondent herein in VAT 33341101000/ 2014-15, dated 31.01.2018 and quashing the same.

W.P.No.4222/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the First Respondent herein in VAT 33341101000/ 2015-16, dated 31.01.2018 and quashing the same.

W.P.No.4223/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the First Respondent herein in VAT 33341101000/2016-17 dated 31.01.2018 and quashing the same.

For Petitioner in all Wps : Mr.N.Inbarajan
For Respondent in all WPs : Mr.G.Dhanamadhri
Govt. Advocate (T)

COMMON ORDER

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.G.Dhanamadhri, learned Government Advocate (T) for the respondents.

2.The petitioner, who is a registered dealer on the file of the respondents under the provisions of the Tamil Nadu Value Added Tax Act, 2006 has filed these writ petitions challenging the assessment orders for the assessment years 2013-14 to 2016-17.

3. Challenge to the impugned orders is mainly on the ground that neither the objections or documents given by the petitioners were considered by the Assessing Officer nor the explanation given by them before the Inspecting Team have taken note off. The petitioner has also raised another contention challenging the authorization for conducting an audit in the business premises of the petitioner on the ground that the Commissioner has not authorized the same and therefore, the authorization by the Joint Commissioner is without jurisdiction.

4. This contention is liable to be rejected in the light of the decision of this court in the case of M/s.Empress Audio v. Commissioner of Commercial Taxes and others made in W.P.No.6031 of 2018, dated 28.04.2018.

5. The learned counsel for the petitioner does not dispute the legal positions and seeks to canvass the other grounds.

6. As pointed out earlier, the petitioner has challenged the impugned orders on the ground of non consideration of the explanation offered, failure to call for the books of accounts and ignoring the explanation given by the petitioner to the Enforcement Group, when they recorded the sworn statement of the partner of the petitioner on 02.12.2016.

7. I have perused the sworn statement dated 02.12.2016, show cause notice dated 14.07.2017, objections given by the petitioner dated 28.11.2017 and the impugned orders dated 31.03.2017. The error which has crept in at the stage of show cause notice dated 14.07.2017 were carried out till the passing of the assessment orders thereby vitiating the entire proceedings, I make such an observation, because, while issuing show cause notice dated 14.07.2017, the respondent has taken only that part of the submission, which was recorded by the Enforcement Group, which also finds place in the sworn statement.

8. By way of illustration, if we take show cause notice

for the assessment year 2013-14, the 1st defect pointed out is with regard to purchase suppression and the difference in the purchase is stated as Rs.61368472. If we compare this tabulated statement with the statement in page 2 of the sworn statement dated 02.12.2016, it is verbatim the same. However, the Assessing Officer did not consider the reply given by the petitioner, which is noted in the sworn statement below the tabulation. Therefore, when the respondent issued show cause notice, he should have also taken note of what the petitioner had stated before the Enforcement and cannot mechanically issue a show cause notice. This is a fundamental error committed by the Assessing Officer.

9. The petitioner, on receipt of the show cause notices has submitted a comprehensive reply dated 16.08.2017. Apart from other details mentioned in the reply, the petitioner has reiterated that they have submitted details, documents and explanation with regard to each of the defects pointed out by the Enforcement Group and without taking note of the details, documents and explanation, show cause notices points out the very same defects.

10. Further, with regard to the difference between the turnover as per the balance sheet and the turnover as per the returns, the petitioner had pointed out that the turnover reported as per the returns represent assessable value as per the customs valuation. However, the purchase shown in the books of accounts includes customs duty, harbour clearing charges, LC opening charges and transportation and this has no implication on VAT.

11. Unfortunately, the respondent did not consider the objections given by the petitioner in an effective manner. The court has pointed out only one issue by way of illustration and it can be safely stated the similar is the approach of the Assessing Officer in the other issues as well.

12. The counter affidavit filed by the Assessing Officer gives a clear indication as what was passing in the mind of he Assessing Officer, since he states that the proposals from the Enforcement has been received for the purpose of implementation.

13. Unfortunately, the Assessing Officer failed to note that he is an independent statutory authority and no person can dictate as to in what manner he has to pass orders. The report of the Enforcement Officer can at best be treated as starting point for issuance of show cause notice. But, once the dealer submits a reply, the Assessing Officer is expected to independently apply his mind and take a decision in the matter.

Since such approach has not been made in the instant case, the impugned orders suffer from infirmity calling for interference.

14. In the result, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the authorised representative of the petitioner, consider the explanation given by the petitioner before the Enforcement Group, the details and documents which were placed before them, the explanation dated 10.08.2017 to the show cause notice dated 14.07.2017 and the explanation dated 28.11.2017 to the show cause notice dated 20.11.2017, call for the petitioner's books of accounts and all relevant documents and after effectively considering the same, take an independent decision and pass a reasoned order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

Rj

To

1 The Assistant Commissioner(CT)
Kaladipet Assessment Circle
703, T.H.Road
Thiruvottiyur
Madhavaram, Chennai - 600 019

2 The Commercial Tax officer - Group I
Enforcement (North),
Chennai - 6

+2cc to Mr.N.Inharajan, Advocate SR.No.38442, 37170
+1cc to Special Government Pleader(Taxes) SR.No.38821

W.P.Nos.4220 to 4223 of 2018 &
W.M.P. Nos.5193 to 5196 of 2018

GN(27/06/2018)