IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.5351 and 5352 of 2018
and
W.M.P.Nos.6570 and 6571 of 2018

Tvl. Golden Shower Garments,
rep. by its Partnet, S.Kalavathi. ...Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (ST)
North Circle, Tiruppur. ...Respondent in both W.Ps.

Prayer in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent, in TIN No.33302440689/2012-13 and 2013-14, respectively, dated 18.12.2017, and to quash the same as being without jurisdiction and authority of law.

For Petitioner in both W.Ps. : Mr.R.Senniappan

For Respondent in both W.Ps. : Mr. M.Hariharan
Additional Government Pleader

COMMON ORDER

Heard Mr.R.Senniappan, the learned counsel appearing for the petitioner and Mr.M.Hariharan, the learned Additional Government Pleader, accepting notice on behalf of the respondent. With consent of the learned counsel on either side, the Writ Petitions are taken up for 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, (the Act, for brevity) has filed these Writ Petitions, challenging the orders of assessment passed by the respondent under the TNVAT Act, for the years 2012-13 and 2013-14.

3. Though the petitioner received the revision notice, they did not file any objections. The learned counsel appearing

for the petitioner submitted that for the impugned assessment order for the AY 2012-13, the allegation is, there is mismatch between the details found in Annexure-I and Annexure-II, and prays that, opportunity may be granted to the petitioner to go before the Assessing Officer and make a submission/explanation in regard to the said allegation. So far as the assessment order, pertaining to the year 2013-14 is concerned, it is submitted that, even at the time of inspection, entire taxes were paid, however, insofar as Defect No.3 is concerned, though the petitioner specifically raised objections and also referred to the decision of this Court, in Tvl. Mahaajay Spinners India Pvt. Ltd., Vs. The Commercial Tax Officer, Salem, in W.P.No.28275 of 2016, dated 30.08.2016, the Assessing Officer has not even referred to and discussed the same, while completing the assessment.

4. On a perusal of the impugned order for the AY 2013-14, I find that though the objections given by the petitioner for Defect No.3 has been recorded, while discussing the matter, the Assessing Officer has omitted to consider the same. Probably, this could have been on account of oversight. Thus, the matter requires to be re-considered by the Assessing Officer with regard to Defect No.3 as well as on the penalty aspect, which has sequence to the finding rendered by the Authority.

5. In the light of the above, the Writ Petition, challenging the assessment order for the year 2012-13 is disposed of, by directing the petitioner to pay 15% of the disputed tax within three weeks from the date of receipt of a copy of this order. If this payment is effected within the time permitted, then, they will be entitled to treat the impugned order as show cause notice and submit their objections within 7 days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law, by passing a reasoned order. Insofar as Writ Petition, challenging the assessment order for the year 2013-14 is concerned, (viz., W.P.No.5352 of 2018) the same is partly allowed and the impugned order, insofar as it relates to Defect No.3 and penalty aspect is concerned, it is set aside and the matter is remanded to the respondent to decide the issue with regard to Defect No.3 and analyze whether penalty is leviable. The petitioner should be afforded an opportunity of personal hearing. On that aspect alone, the Assessing Officer shall pass appropriate orders in accordance with law, and in regard to the remaining issue, if the petitioner is aggrieved, they are entitled to file Appeal before the Appellate Authority.

6. In the result, W.P.No.5351 of 2018 is disposed of, with the above terms and W.P.No.5352 of 2018 is partly allowed on the terms, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (ST)
North Circle, Tiruppur.

2.The Section Officer,
E.R.Section, High Court Madras. (2 Copies)

+1cc to Mr.R.Senniappan, Advocate, S.R.No.25671

+1cc to the Special Government Pleader(Taxes), S.R.No.25732

W.P. No.5351& 5352 of 2018

RR(CO)

RRK(14/05/2018)