IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2018

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.4350 and 4351 of 2018
and
W.M.P.Nos.5348 of 2018

M/s. Kaleesuwari Refinery Pvt. Ltd.,
rep. by its Director. ...Petitioner in both W.Ps.

Vs.

The Deputy Commissioner (CT)-II,
Large Tax Payers Unit,
Chennai- 600 008. ...Respondent in both W.Ps.

Prayer in WP.4350 and 4351/2018:

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 his proceedings in TIN No.333912800956/2014-15, and to quash the order, dated 22.12.2017 and 06.02.2018 insofar as it relates to the reversal of the input tax credit and purchase suppression respectively

For Petitioner in both W.Ps. : Mr.P.V.Sudakar

For Respondent in both W.Ps. : Mrs.G.Dhanamadhri
Government Advocate

COMMON ORDER

Heard Mr.P.V.Sudakar, the learned counsel appearing for the petitioner and Mrs.G.Dhanamadhri, the learned Government Advocate appearing on behalf of the respondent.

2. Though the learned Government Advocate seeks time for filing counter affidavit, on the ground that there are several factual issues to be gone into, this Court is inclined to take up the Writ Petitions for disposal for the reason that there is an effective alternate remedy available to the petitioner as against the impugned orders.

3. The petitioner 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). The petitioner was assessed to tax under the provisions of TNVAT Act, for the assessment year 2014-15. There are several issues involved, and the major issues were pertaining to the mismatch. The objections filed by the petitioner/dealer were considered, and it is admitted by the Assessing Officer that 97% of the mistakes pointed out in the notice were reconciled and the tax were levied. However, in respect of certain transactions pertaining to reversal of ITC claimed based on the cross verification of Annexure-I and other end dealears Annexure-II and levy of tax based on purchase suppression, details were placed before the respondent, by way of a Petition under Section 84 of the Act to redo the assessment, as, according to the petitioner/dealer, there are errors, which are apparent on the face of the order. The respondent has considered the Petition under Section 84 and stated that sufficient opportunity has been granted and there is no error apparent on the fact of record.

4. It appears that the assessment proceedings were carried out for nearly nine months. Thus, in my considered view, it would not be desirable to send the matter back to the Assessing Officer, who has been dealing with the assessment files for almost nine months. Considering the issues, which have been pointed out in the Petition filed under Section 84 of the TNVAT Act, this is a fit case, where, the Revisional Authority should look into the aspect, because, the petitioner has pointed out that the other end dealer has wrongly assessed the purchases as sales and this has resulted in the discrepancies and there is no sales suppression on account of purchase suppression and with regard to the reversal of ITC claimed against the cross verification of records, five other end dealers are involved and for each of them, the petitioner has given explanation, as to how, there is error in the assessment order. These aspects should be considered by the Joint Commissioner.

5. In the light of the above, the Writ Petitions are disposed of by directing the petitioner to file Appeal Petition to the Joint Commissioner (CT) within 15 days from the date of receipt of a copy of this order. On receipt of the Appeal Petition, the Joint Commissioner shall verify the details, and if necessary, call for remand report from the Assessing Officer and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to the authorized representative of the petitioner within 60 days from the date on which, personal hearing is concluded. Till such

time, no coercive action shall be taken against the petitioner for recovering the tax proposed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner (CT)-II,
Large Tax Payers Unit,
Chennai- 600 008.

+1cc to Mr.P.V.Sudakar, Advocate sr.26849
+1cc to Government Pleader in sr.no.27356

Writ Petition Nos.4350 and 4351 of 2018

ssv(co)
nr 17/05/2018