IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.8399 to 8401 of 2018
and W.M.P.Nos.10360 to 10362 of 2018
and W.P.Nos.8665 to 8667 of 2018
and W.M.P.Nos.10587 to 10589 of 2018

W.P.No.8399 of 2018

Sri Narasu's Coffee Company Private Limited,
Rep. by its Chairman & Managing Director,
P.Sivananthnam,
No.16, Court Road, Johnsonpet, Salem-636 007. ... Petitioner

Vs.

The Assistant commissioner (ST),
Salem Town North Circle, Salem. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the files of the respondent in TIN:33532660025/2011-12, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 respectively dated 28.02.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice (W.Ps 8399 to 8401/2018 & W.Ps 8665 to 8667)

For Petitioner : Mr.R.Senniappan
(in all W.Ps.)

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

C O M M O N O R D E R

Heard Mr.R.Senniappan, 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. The petitioner, in these writ petitions, has questioned the impugned orders passed by the respondent dated 28.02.2018, for the assessment years 2011-12 to 2016-17 under the provisions

of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act").

3. So far as the assessment orders for the years 2011-12, 2012-13, 2013-14 and 2016-17 are concerned, the petitioner has challenged the same contending that in spite of producing all the records, the respondent has completed the assessment by making an observation that the petitioner has not produced any records. When the case came up for hearing on 11.04.2018, the learned Government Advocate was directed to get oral instructions from the respondent, as to whether the petitioner has produced the records before him. On such information sought for, the respondent orally informed the learned Government Advocate that no records have been produced. Subsequently, when other writ petitions were listed on 13.04.2018, the learned counsel for the petitioner reiterated that all records have been produced before the assessing officer and what has been stated by the assessing officer is factually incorrect. Therefore, this Court on 13.04.2018, directed the assessing officer to appear in person along with the original assessment file. Today, the assessing officer, Thiru.P.Dhanasekaran, B.Sc., is present before this Court along with the original file.

4. The learned Government Advocate submitted that the assessing officer, on receipt of the directions issued by this Court dated 13.11.2018, made a thorough search of the record room and found that the petitioner had produced photostat copies of the invoices. However, they were not put up along with the assessment records, therefore, he was unaware of the same. It is reiterated that what has been produced before the Department is only photostat copies, but not the original invoices.

5. The learned counsel for the petitioner submitted that all the original invoices are now available with the petitioner and it has been brought to this Court by the official from the petitioner company, and if an opportunity is granted, the petitioner will produce the original invoices and if the respondent peruses the same, the issues pointed out in the assessment orders will be sorted out.

6. In the light of the above, Writ Petition Nos.8399, 8400, 8401 and 8667 of 2018 are allowed, the impugned assessment orders for the assessment years 2011-12, 2012-13, 2013-14 and 2016-17 are set aside and the matters are remitted to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing during which the petitioner should produce all the original invoices and other

records. The respondent shall carefully peruse the same and if any clarification is required from the petitioner, the same shall be sought for and the respondent shall complete the assessment by passing a speaking order on merits and in accordance with law.

7. In so far as Writ Petition Nos.8665 and 8666 of 2018 are concerned, they have been filed challenging the assessment orders for the assessment years 2014-15 and 2015-16. In these assessment orders, penalty which has been levied has been questioned.

8. Learned counsel for the petitioner pointed out that for the same assessment years while issuing the first notice dated 23.04.2017, there was no proposal to levy penalty, but there was only proposal to levy tax at the rate of 14.5%. The petitioner, soon after the surprise inspection was conducted, has paid the tax at the rate of 14.5%. Considering the same, the respondent has passed an order on 04.09.2017, dropping the proposal.

9. As mentioned earlier, while issuing notice dated 23.04.2017 for both the assessment years, viz., 2014-15 and 2015-16, there was no proposal for levy of penalty. Therefore, by way of revised notice, the respondent cannot initiate fresh proceedings for levy of penalty.

10. The learned Government Advocate has placed reliance on the decision of the Division Bench of this Court in the case of Shuttle Weaves International vs. The Commercial Tax Officer and others (2010) 30 VST 323 (Mad.)

11. On going through the said judgment, this Court finds that the said case is factually different, as it was not a case where initially there was no proposal to levy penalty and after the completion of the assessment under Section 27 of the TNVAT Act, fresh proceedings were initiated to levy penalty. Therefore, the decision in the case of Shuttle Weaves International (supra) is distinguishable on facts and cannot be applied to the petitioner's case. As rightly pointed out by the learned counsel for the petitioner, the question as to whether a separate proceedings can be issued for levy of penalty by passing a separate and independent order came up for consideration in the case of Rainbow Foundations Ltd., vs. Assistant Commissioner (CT) (2011) 37 VST 592, wherein it was held as follows:

"Held, allowing the petition that under Section 16(2) of the Act, the assessing authority had not jurisdiction to impose penalty by a separate and independent order. Even if a statute has brought in a new section by way of Section 12C, given the fact that Section 16(2) of the Act remained as it was, the view of the officer that by introduction of Section 12C, Section 16(2) would lost its validity, rendering the decision irrelevant, could not be accepted by any standard of reasoning. Therefore, the penalty levied through an independent order under Section 16(2) of the Act was to be set aside."

12. The above decision would squarely apply to the facts on hand and therefore, the levy of penalty by a separate proceedings has to be held to be without jurisdiction. That apart, in the instant case, there was no proposal to levy the penalty while issuing the revision notice at the first instance, and the proposal made in the original revision notice was dropped taking into consideration that the petitioner has paid the taxes. Therefore, the respondent cannot reopen the proceedings, that too by way of a fresh notice for imposing penalty. Hence, the impugned assessment orders for the assessment years 2014-15 and 2015-16 are liable to be set aside.

13. In the result,

(i) Writ Petition Nos.8665 and 8666 of 2018 are allowed and the impugned orders for the assessment years 2014-15 and 2015-16 are quashed; and

(ii) Writ Petition Nos.8399, 8400, 8401 and 8667 of 2018 are allowed, the impugned orders for the assessment years 2011-12, 2012-13, 2013-14 and 2016-17 are set aside and the matters are remitted to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing during which the petitioner should produce all the original invoices and other records. The respondent shall carefully peruse the same and if any clarification is required from the petitioner, the same shall be sought for and the respondent shall complete the assessment by passing a speaking order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

The Assistant commissioner (ST),
Salem Town North Circle, Salem.

+1 CC to Mr.R. Senniappan, Advocate sr 30062.
+1 CC to Spl. Govt. Pleader (T) sr 29684, 29685.

W.P.Nos.8399 to 8401 of 2018
and W.P.Nos.8665 to 8667 of 2018

CA(CO)
SP(09/05/2018)