IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.03.2018
CORAM
THE HONOURABLE Mr. JUSTICE M.DURAISWAMY
W.P.Nos.4718 to 4720 of 2018 &
W.M.P.Nos.5829 to 5831 of 2018

M/s.Ayyar & Co
Represented by its Proprietrix
Mrs.S.Saraswathi
543, D.B. Road, R.S. Puram
Coimbatore - 641 002 .. Petitioner in all WPs

v.

1 The Assistant Commissioner (ST)
R.S.Puram (West) Circle
Coimbatore

2 The Commercial Tax Officer (Enforcement)
Group-VII, Coimbatore

3. The Commercial Tax Officer (Enforcement)
Group - VI, Coimbatore .. Respondents in all WPs

W.P.No.4718/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the 1st respondent in TIN No. 33461962585/2014-15 and quash the impugned order dated 31.01.2018 as one passed without any reasons and also contrary to the provisions of the TNVAT Act and against the principles of natural justice and further direct the 1st respondent to pass a fresh assessment order after providing the details requested by the petitioner and considering the objections filed by the petitioner with an independent mind and not being influenced by the report of the second and third respondents.

W.P.No.4719/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the 1st respondent in TIN No. 33461962585/2015-16 and quash the impugned order dated 31.01.2018 as one passed without any reasons and also contrary to the provisions of the TNVAT Act and against the principles of natural justice and further direct the 1st respondent to pass a fresh assessment order after providing the details requested by the petitioner and considering the objections filed by the petitioner with an independent mind and not being influenced by the report of the second and third respondents.

W.P.No.4720/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the 1st respondent in TIN No. 33461962585/2016-17 and quash the impugned order dated 31.01.2018 as one passed without any reasons and also contrary to the provisions of the TNVAT Act and against the principles of natural justice and further direct the 1st respondent to pass a fresh assessment order after providing the details requested by the petitioner and considering the objections filed by the petitioner with an independent mind and not being influenced by the report of the second and third respondents.

For Petitioner : Mr.P.Rajkumar

For Respondents : Ms.G.Dhanamadhri
Government Advocate (T)

COMMON ORDER

Ms.G.Dhanamadhri, learned Government Advocate (Tax) takes notice for the respondents. By consent, the main writ petitions are taken up for disposal at the admission stage itself.

2. The petitioner has filed the above writ petitions to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the 1st respondent dated 31.01.2018 in respect of the assessment years 2013-14, 2014-15 and 2016-17, to quash the same and further direct the 1st respondent to pass fresh assessment orders after providing the details requested by the petitioner and considering the objections filed by the petitioner and not being influenced by the report of the respondents 2 and 3.

3. It is the case of the petitioner that the 1st respondent had passed the impugned orders verbatically reproducing the findings rendered by the Enforcement Wing and also not considering the objections filed by the petitioner.

4. On a perusal of the impugned orders passed by the respondent, it could be seen that the 1st respondent had passed the impugned orders, without giving any reason with regard to the objections filed by the petitioner.

5. The learned counsel appearing for the petitioner submitted that in similar circumstances, this court by order dated 03.02.2016 in W.P.Nos.1654 & 1655 of 2016 has passed the following order :-

> 4. It is the main contention of the learned Senior Counsel appearing for the petitioner that

though the Assessing Officer had prepared a Deviation Report, the impugned orders of assessment have been passed verbatim reproducing the findings rendered by the Enforcement Wing. In this regard, the learned Senior Counsel submitted that on a perusal of the impugned orders, it could be seen that the first respondent had passed the impugned orders without applying his mind and following the order passed by the Enforcement Wing. Therefore, the reading of the impugned orders clearly establish that the first respondent had followed the order passed by the Enforcement Wing and passed the impugned orders. That apart, the orders passed by the first respondent also establish that total non-application of mind on the part of the first respondent.

5. Mr.Manoharan Sundaram, learned Additional Government Pleader, appearing for the respondents submitted that the impugned orders may be set aside and the first respondent may be directed to pass a fresh order after hearing the petitioner, on merits and in accordance with law.

6. Having regard to the submissions made by the learned counsel on either side, for the reasons stated above, the impugned orders passed by the first respondent are set aside and the matters are remitted back to the first respondent for fresh consideration and the first respondent is directed to consider the case of the petitioner after hearing the submissions on behalf of the petitioner and pass a fresh orders on merits and in accordance with law , within a period of eight weeks from the date of receipt of a copy of this order, without being influenced by any of the observations given by the Enforcement Wing.

The learned counsel further submitted that since the ratio laid down in the above said writ petitions squarely applies to the present case, following the same, the impugned orders passed in the present writ petitions have to be set aside.

6. Ms.Dhana Madhri, learned Government Advocate (Tax) appearing for the respondents fairly submitted that the impugned orders may be set aside and the 1st respondent may be directed to pass fresh orders, after hearing the petitioner, on merits and in accordance with law.

7. Having regard to the submissions made by the learned counsel on either side, for the reasons stated above, the impugned orders dated 31.01.2018, passed by the 1st respondent are set aside and the matters are remitted back to the 1st respondent for fresh consideration and the 1st respondent is directed to consider the case of the petitioner after hearing the submissions on behalf of the petitioner and pass fresh orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, without being influenced by any of the observations given by the Enforcement Wing. The 1st respondent is also directed to furnish the details sought for by the petitioners in the petitions filed by them.

With these observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Rj
To

1 The Assistant Commissioner (ST)
R.S.Puram (West) Circle
Coimbatore

2 The Commercial Tax Officer (Enforcement)
Group-VII
Coimbatore

3. The Commercial Tax Officer (Enforcement)
Group - VI
Coimbatore

+1 cc to M/s.P.Rajkumar Advocate sr 16105
+1 cc to the Govt Pleader sr 16652

W.P.Nos.4718 to 4720 of 2018 &
W.M.P.Nos.5829 to 5831of 2018

gmI(co)
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