In the High Court of Judicature at Madras

Dated : 11.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.8603 to 8611 of 2018
& WMP.Nos.10531 to 10539 of 2018

M/s.Sree Vigneswara Marbles & Granites rep.by its Partner Mr.V.Chandrasekar ...Petitioner

Vs

The Assistant Commissioner (ST), Avinashi Assessment Circle, Avinashi. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records in his proceedings in TIN 33792082732/2007-08, TIN 33792082732/2008-09, TIN 33792082732/ 2009-10, TIN 33792082732/2010-11, TIN 33792082732/2011-12, TIN 33792082732/2012-13, TIN 33792082732/2013-14, TIN 33792082732/ 2014-15 and TIN 33792082732/2015-16 and quash the respective assessment orders dated 25.1.2018 made therein.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. In these writ petitions, the petitioner has challenged the orders passed by the respondent dated 25.1.2018 under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 for the assessment years 2007-08 to 2015-16.

3. Earlier, the petitioner approached this Court by filing W.P.Nos.42625 to 42633 of 2016 challenging the assessment orders dated 17.10.2016. In the said writ petitions, the petitioner contended that the statements obtained at the time of inspection is not final, that it is always open to the dealer to substantiate its contention by documentary evidence and that the Assessing Officer failed to appreciate the contention of the

petitioner that their purchases, both local and inter-State, are on CIF basis where the carriage, insurance and freight upto delivery at the door steps of the petitioner are included in the invoice of the seller and in as much as the freight element already forms part of the purchase invoice, there was no need or necessity to pay or account for any freight charges separately.

4. After considering the submissions made by the learned counsel on either side, though this Court was not inclined to set aside the impugned assessment orders, in the common order dated 02.12.2016, this Court pointed out that the petitioner should not be left without any remedy. Therefore, the petitioner was directed to file objections under Section 84 of the said Act for rectification of the assessments, in which, the petitioner was granted an opportunity to raise all contentions and produce documents. This Court also fixed time frame, within which, the objections should be filed.

5. In terms of the directions issued by this Court, the respondent issued notices dated 12.1.2017 fixing the date for personal hearing on 28.1.2017 and directed the petitioner to file objections under Section 84 of the said Act. The petitioner also filed their comprehensive objections on 31.1.2017, in which, it was claimed that the petitioner appeared before the Assessing Officer and produced all the necessary purchase invoices to establish that there was no necessity to pay or account for any freight charges separately. It appears that the comprehensive objections filed under Section 84 of the said Act were before the predecessor Assessing Officer, that the matter is said to have been pending for nearly a year and that after the new officer has taken charge, the impugned assessment orders have been passed.

6. From the impugned assessment orders, this Court finds that the claim of the petitioner has been rejected on the ground that the petitioner has not produced any documentary evidence such as purchase bills in support of their claim. Therefore, the Assessing Officer held that the petitioner has not discharged the burden of proof cast on them by furnishing copies of purchase invoices. The settled legal principle is that the person, who hears, must decide the matter.

7. It is stated that the predecessor Assessing Officer heard the matter and also received necessary copies of the purchase invoices.

8. If that is so, the orders should have been passed by the predecessor Assessing Officer. Further, the successor Assessing Officer, who has to deal with the file now, has to issue a fresh notice to the assessee, hear them and take a decision. This having not been done in the instant case, the matter requires to

be reconsidered. However, for such a reason, this Court is not inclined to set aside the impugned orders.

9. It is pertinent to note that in respect of one of the assessment years i.e. 2015-16, in the relevant impugned assessment order, the respondent stated that nothing prevented the dealers to raise these objections before the Inspecting Officers and reiterating the same objections, in pursuance of the High Court notice, is, in no way, helpful to them to consider these objections at the stage of assessment. The objection raised by the petitioner pertains to stock variation. The respondent - Assessing Officer should bear in mind that even if no objections were raised by the assessee before the Inspecting Officer, that is not an estoppal for the dealer to raise objections before the Assessing Officer as and when revision notices are issued. Therefore, the observation made by the Assessing Officer in this regard is contrary to the settled legal position. The corollary is that the Assessing Officer should take an independent decision in the matter uninfluenced by the observations made by the Inspecting Officers.

10. Accordingly, the writ petitions are disposed of with a direction to the assessee to treat the impugned assessment orders as show cause notices and give a reply by enclosing copies of all necessary documents within a period of 15 days from the date of receipt of a copy of this order. On receipt of such reply, the respondent is directed to fix a date for personal hearing, hear the authorized representative of the petitioner, peruse the materials that may be placed on record and take a fresh decision on merits and in accordance with law, as expeditiously as possible. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (ST), Avinashi Assessment Circle, Avinashi.

+1cc to Mr.P.RAJKUMAR, Advocate, S.R.No. 26560
+1cc to the Government Pleader, S.R.No. 27359

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KAN(CO)
TR(24/04/2018)