IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2018

Coram

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

Writ Petition Nos.4808 and 4809 of 2018
and
W.M.P.Nos.5957 and 5958 of 2018

Tvl. Kaseem Hardware Stores,
rep. by its Partner. ...Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (CT)
Villupuram - I. ...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.33614680006/2014-15 and 2015-16, respectively, dated 14.06.2017, and to quash the same, as having being passed without jurisdiction and contrary to the principles of natural justice.

For Petitioner : Mr.R. Ganesh Kanna
For Respondent : Mr. M.Hariharan
Additional Government Pleader

COMMON ORDER

Heard Mr.R.Ganesh Kanna, 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, both 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, (the Act, for brevity) has filed these Writ Petitions, challenging the assessment orders passed under the Act, for the assessment years 2014-15 and 2015-16.

3. The petitioner, though received the revision notice, dated 31.03.2017, did not file their objections. In these Writ Petitions, the petitioner would contend that, even if objections were not filed, the Assessing Officer cannot mechanically

confirm the proposals in the Revision Notice, but has to record specific reasons, especially, when it is alleged that there are bogus transactions.

4. On a perusal of the impugned assessment orders, it is seen that, there are three common issues arising for consideration, viz., i) ITC claimed, adjusted and carry forward registers are not maintained under Section 6 (2) of TNVAT Act, 2006; ii) On verification of monthly returns Annexure-I along with purchase details from other dealer Annexure-II taken from the official website, it is found that the purchases were not accounted for, and therefore, they were treated as purchase omission for the year 2014-15 and 2015-16. iii) Levy of penalty under Section 27 (3) of the Act.

5. So far as the second issue pertaining to the mismatch of the details between Annexure-I and Annexure-II Schedule, the petitioner is entitled to submit their objections, and unless and until, it is found that the petitioner has to be blamed for not reflecting those transactions, the question of levying tax based on the alleged mismatch between the Annexure-I and Annexure-II, could not have arisen. Likewise, unless, there is a specific finding about the huge suppression of the turnover, the question of levying penalty, that too, 150% also would not arise. Similarly, with regard to the first issue that ITC claimed, adjusted and carry forward registers are not maintained under Section 6 (2) of TNVAT Act, 2006, the same also could be reconciled, if the petitioner has produced necessary records. Unfortunately, the petitioner did not file their objections nor appeared before the Assessing Officer.

6. Thus, considering the factual position and taking note of the fact that the petitioner is a small dealer, running a Hardware shop, and the turnover is also not very huge, this Court is inclined to give one opportunity to the petitioner to go before the Assessing Officer to substantiate their case. However, such an opportunity shall be, subject to the compliance of certain conditions within the reasonable time.

7. Accordingly, these Writ Petitions are disposed of, by directing the petitioner to pay 15% of the disputed tax for each of the assessment years, and such payment shall be effected within six weeks from the date of receipt of a copy of this order. If the petitioner complies with this condition, then, they will be entitled to treat the impugned assessment orders as show cause notices, and submit their objections enclosing all relevant records, in support of their claim within 7 days from the date on which, remittance of 15% of the disputed tax has been made, and as and when the objections are received in full form, the respondent shall fix a date for personal hearing of the petitioner, verify the records and redo the assessment in

accordance with law, by passing a reasoned order. Till the above exercise is completed, no coercive action shall be initiated against the petitioner for recovery of the balance tax and penalty, as quantified in the impugned assessment orders. It is made clear that, if the petitioner does not comply with the condition imposed by this Court, then, the benefit of this order will not enure to the petitioner and the Writ Petition would stand dismissed automatically, leaving it open to the respondent to proceed further, pursuant to the impugned assessment orders in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petition are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Villupuram - I.

+1 CC to Mr.A. Ravichandran, Advocate sr 26088.
+1 CC to The Spl. Govt. Pleader(T) sr 25729.

Writ Petition Nos.4808 and 4809 of 2018

PPA(CO)
SP(24/04/2018)