IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 05.04.2018
Coram

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

Writ Petition Nos.4900 to 4905 of 2018
and
W.M.P.Nos.6045 to 6050 of 2018

W.P.No.4900 of 2018

A-Vone Automobiles
rep. by its Partner, A.Mohamed Azarudin.
Nellikuppam Main Road, Cuddalore 607 001

...Petitioner

Vs.

The Commercial Tax Officer,
Cuddalore Town. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent in TIN.33444382455/11-12, dated 15.12.2017, TIN.33444382455/12-13, dated 15.12.2017, TIN.33444382455/14-15, dated 20.12.2017, TIN.33444382455/15-16, dated 20.12.2017, TIN.33444382455/16-17, dated 19.01.2018 respectively and to quash the same.

For Petitioner in all W.Ps. : Mr.A.P.Srinivas

For Respondent in all W.Ps. : Mr. M.Hariharan
Additional Government Pleader

COMMON ORDER

Heard Mr.A.P.Srinivas, the learned counsel appearing for the petitioner and Mr.M.Hariharan, the learned Additional Government Pleader, accepting notice on behalf of the respondent. Since the issue involved in these Writ Petitions are identical, with consent of the learned counsel on either side, these Writ Petitions are taken up together and disposed of by this common order.

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, (TNVAT Act, for brevity) has filed these Writ Petitions, challenging the assessment orders passed by the respondent under the TNVAT Act, for the assessment years 2011-12

to 2016-17, dated 15.12.2017, 19.01.2018, 20.12.2017 respectively.

3. The challenge to the impugned assessment orders is on the ground that, it is in total violation of principles of natural justice, and failure to adhere to the direction of the Court, issued in (JKM Graphics Solutions Pvt. Ltd., Vs. Commercial Tax Officer, Vepery Assessment Cirlce, Chennai) reported in 2017 99 VST 343 (Mad).

4. Two issues arise for consideration in respect of all assessment years. First issue is pertaining to the alleged purchase omission and the other issue is pertaining to the reversal of ITC claimed for the discount received for the relevant assessment years. Apart from that, there is a proposal to levy penalty under Section 27(3) of the Act.

5. The reason for issuing the revision notices, dated 05.06.2017/06.06.2017, is on account of the inspection, which was conducted by the Enforcement Wing Officials. In the notices, dated 05.06.2017/06.06.2017, the respondent would state that the petitioner themselves have admitted the discrepancies and paid the tax before the Enforcement Wing Officials. However, in the statement recorded by the Enforcement Wing Officials during inspection, the petitioner has made the following statement:-"j';fspd; kjpg;gPl;oy; cld;ghL ,y;iy vd;w fUj;ij gjpt[bra;fpnwd ".

6. On a reading of the above statement made by the petitioner, it is crystal clear that the petitioner has not accepted the allegations made by the Enforcement Wing Officials. Therefore, the Assessing Officer has committed serious error in stating that the petitioner themselves have admitted the discrepancies. This would be sufficient, even to the set aside the show cause notice. However, the fact remains that the petitioner submitted their objections and requested for personal hearing so that, they could discuss with the Assessing Officer and then, produce necessary record to reconcile the alleged purchase omission. However, the Assessing Officer did not take note of the tone and tenor of the objections given by the petitioner, but, mechanically, stated that the details given by them were not exactly tallied. The Assessing Officer should have made an endeavour atleast to test the details of the transactions, which tally, and he ought not to have completed the assessment by making such vague averments. In the light of the same, this Court is of the view that the impugned orders are completely flawed.

7. For the above reasons, the Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration, who shall first afford an opportunity of personal hearing to the petitioner, and if the petitioner requests for any details, the same shall be furnished, after which, further opportunity be granted and the assessment shall be redone in accordance with law and a speaking order should be passed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Cuddalore Town.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.25395
+1cc to Government Pleader Sr.No.25730

NRL(CO)
sm:23.4.2018

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