IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.10839 to 10844 of 2018
&
W.M.P.Nos.12785 to 12790 of 2018

M/s.Crescent Trade Links
Rep. by its Managing Partner
A.A.Mohammed Ziaudeen
25/317, R.G.Street
Coimbatore - 641 001 ... Petitioner in all the Wps

vs

Assistant Commissioner (ST)(FAC)
R.G.Street Assessment Circle
Coimbatore - 641 018 ... Respondents in all the Wps

Common Prayer:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the respondent in TIN 33721762525/2009-10, TIN 33721762525/2010-11, TIN 33721762525/2011-12, TIN 33721762525/2012-13, TIN3372176252 5 / 2013-14 TIN:33721762525/2014-15 and quash the order dated 04.04.2018 passed therein.

For Petitioner : Ms.Hema Muralikrishnan
For Respondent : Mr.M.Hariharan
Additional Govt. Pleader

O R D E R

Heard Ms.Hema Muralikrishnan, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent.

2. These writ petitions have been filed by the writ petitioner challenging the assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the Assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15. The common issue which arises in all these assessment orders is with regard to cross verification / MIS report. In the objections filed by the petitioner to the revision notices, the petitioner referred to the decisions of this Court in Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT) Valluvarkottan Assessment Circle, Chennai reported in 2012 (50) VST 129 (Mad), Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) Vadapalani I Assessment Circle, Chennai and another reported in 2013 (60) VST 283 (Mad.) and Sri Anadal Co Vs. the Assistant Commissioner (CT), Salem in W.P.No.3473 to 3470 of 2015, wherein it has been held that if the selling dealer had not paid the tax, the liability had to be fastened on the selling dealer and not on the purchasing dealer. While considering the above said objections the respondent Assessing Officer accepts that the judgments are in favour of the dealer, however, states that the petitioner is liable to pay tax.

3. I am unable to countenance the said finding of the Assessing Officer. The respondent has to complete the assessment under the TNVAT Act by taking note of the judgments. It would have been a different matter if the respondent had discussed the judgments and factually found that it is distinguishable. However, the respondent would confirm that the judgment relied on by the petitioner are in their favour. If that is so, the respondent has to apply the judgments. If applied the proposal made under the said head cannot be sustained. Therefore, this Court is inclined to remand the matter to consider the said issue afresh.

4. Insofar as the Assessment year 2014-15 is concerned, apart from the above issue, there is one other issue where there is an allegation of stock difference which was noticed at the time of inspection. The petitioner in their objections dated 12.03.2018 from Paragraph 3.3 have explained as to how the finding given by the inspecting team is factually incorrect. The respondent, while completing the assessment, has not specifically mentioned about Defect No.3, but it is found in sub-paragraph 2 under Defect No.2 wherein the respondent has solely gone by the verification done by the Enforcement Wing in the place of business of the dealer. However, the petitioner has putforth an explanation in the objections filed by them. Therefore, the respondent should have considered the objections and assessed the correctness of the objection raised and not merely gone by the report of the Enforcement Wing officials. Having not done so, the respondent has abdicated his powers as an Assessing Officer, who is an independent statutory Authority. Therefore, the said issue is also required to be reconsidered.

5. In the result, these writ petitions are allowed and the finding rendered in the impugned Assessment Orders with regard to cross verification is set aside and finding with regard to stock difference for the Assessment year 2014-15 is set aside and the matters are remanded to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner and redo assessment regarding above two aspects and pass fresh orders on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)(FAC)
R.G.Street Assessment Circle
Coimbatore - 641 018

+1cc Mr.Muralikrishnan, Advocate sr.no.31473

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skv(co)
nr 07/06/2018