IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.24240 to 24242 of 2018
and
WMP Nos.28244 to 28247 of 2018

M/s.Spencer's Retail Limited
Represented by its Manager-Indirect Taxation
Spencer's Palza, 4th Floor
No.769, Anna Salai, Chennai-600 002.
..Petitioner
(in WP.Nos.24240 to 24242 of 2018)

Vs.

1. The Assistant Commissioner (CT)
Anna Salai Assessment Circle
Greams Road, Chennai-600 006.

2. The Appellate Deputy Commissioner (Appeals)
Chennai (Central) (FAC)
Greams Road, Chennai-600 006.

3. The Commissioner of Commercial Taxes
Chepauk, Chennai-600 005.

4. The Government of Tamil Nadu
Represented by its Secretary
Commercial Taxes Department
Fort St.George, Chennai-600 009.

..Respondents
(in WP.Nos.24240 to 24242 of 2018)

Writ petition No.24240 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in A.P.No.139 of 2015 TIN No.33390640950/2007-2008 dated 23.11.2017 passed by the 2nd respondent and quash the same.

Writ petition No.24241 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in A.P.No.140 of 2015 TIN No.33390640950/2008-2009 dated 23.11.2017 passed by the 2nd respondent and quash the same.

Writ petition No.24242 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in A.P.No.141 of 2015 TIN No.33390640950/2009-2010 dated 23.11.2017 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran
For Respondents : Mrs.G.Dhana Madhri in all
Government Advocate (Tax) in all WP's

C O M M O N O R D E R

The petitioner, who is one and the same in all these writ petitions, is aggrieved against the common order passed by the First Appellate Authority dated 23.11.2017, in respect of the assessment years 2007-2008, 2008-2009 and 2009-2010.

2. Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondents. By consent of the parties, the main writ petitions are taken up for final disposal at the admission stage itself.

3. Mr.Raghavan Ramabadran, learned counsel for the petitioner submitted that the order of the Assessing Officer, which was put to challenge before the Appellate Authority, itself was beyond the scope of the notice of proposal and therefore, the Appellate Authority ought to have considered the said aspect, when it was raised specifically before the said authority. He further contended that the order passed by the Appellate Authority, impugned in these writ petitions, was not served on the petitioner and on the other hand, it was served on the authorized representative of the petitioner, which is not a proper procedure for serving the order.

4. On the other hand, the learned Government Advocate (Tax) for the respondents submitted that the petitioner is having an effective alternative remedy, by filing further appeal before the Tamil Nadu Sales Tax Appellate Tribunal and therefore, all the contentions raised before this Court on the factual aspects of the matter, can be raised by the petitioner before the Tribunal. Insofar as the contention of the learned counsel for the petitioner with regard to the service of the order is concerned, the learned Government Advocate submitted that the relevant rule contemplates service of such order either on the Assessee or on the authorized representative of the Assessee. Therefore, she contended that the manner of service of the order cannot be a reason for invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

5. Heard both sides.

6. There is no dispute to the fact that the petitioner on being aggrieved against the order passed by the Assessing Officer, has chosen to file an appeal before the First Appellate Authority, by raising grounds touching upon the merits of the matter as well as by pointing out that the original authority dealt with an issue and passed the order on the same, which was not the subject matter in the show cause notice. However, the First Appellate Authority, passed the present impugned order rejecting the appeal. The grievance of the petitioner before this Court is that the First Appellate Authority failed to consider the above issue raised in the appeal. Needless to say that those factual aspects of the matter can further be agitated before the next fact finding authority, since such effective alternative remedy is provided under the Statute. Therefore, in the considered view of this Court, it is for the petitioner to agitate the matter further before the Second Appellate Authority viz., the Tamil Nadu Sales Tax Appellate Tribunal, by filing a regular statutory appeal, by complying with all the procedures for filing such appeal.

7. Therefore, this Court, is not expressing any view on the merits of the contentions raised by both parties, as it is for the next fact finding authority viz., The Tamil Nadu Sales Tax Appellate Tribunal to go into the same and decide. Accordingly, without expressing any view on the merits of the matter, all these writ petitions are disposed of, by granting liberty to the petitioner to file a statutory appeal before the Tamil Nadu Sales Tax Appellate Tribunal, within a period of two weeks from the date of receipt of a copy of this order, by complying with the other statutory requirements for filing such appeal. If any such appeal is filed within the time stipulated in this order, the Tribunal shall consider the same and pass orders on merits and in accordance with law on those appeal, without reference to the period of limitation. Till the petitioner files such appeal before the Tribunal, no coercive steps shall be taken against the petitioner. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT)
Anna Salai Assessment Circle
Greams Road, Chennai-600 006.

2.The Appellate Deputy Commissioner (Appeals)
Chennai (Central) (FAC)
Greams Road, Chennai-600 006.

3.The Commissioner of Commercial Taxes
Chepauk, Chennai-600 005.

4.The Government of Tamil Nadu
Represented by its Secretary
Commercial Taxes Department
Fort St.George, Chennai-600 009.

5.The Section Officer,
ER.Section, High Court, Madras.

+3cc to Mr.Lakshmi, Advocate, S.R.No.64714

+1cc to the Government Pleader, S.R.No.64714

W.P.Nos.24240 to 24242 of 2018

RR(CO)
GSP(12/10/2018)