IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.12712 to 12716 of 2018
W.M.P.Nos.14897 to 14901 of 2018

M/s.Mahalakshmi Marbles
Rep. By its Proprietor,
Mr.N.Muruganathan,
No.3/229, Thorapathyamman Kovil Street,
Sendurai, Ariyalur District - 621714.

... Petitioner in all WPs.

Vs.

The Commercial Tax Officer,
Jayankondan Assessment Circle.

...Respondent in all Wps.

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the impugned proceedings of the respondent in TIN:33743621713/2010-11, 33743621713/2011-12, 33743621713/2012-13, 33743621713/2013-14, and 33743621713/2014-15, respectively dated 27.03.2018 and quash the same as passed in violation of the principles of natural justice and also contrary to the circulars dated 04.11.2013 and 11.08.2015 issued by the Commissioner of Commercial Taxes, Chennai and the orders passed by the Hon'ble Madras High Court in W.A.Nos.1038 to 1040/2015 in the case of M/s.Giant Cement Trading Pvt. Ltd. and others and in W.P.No.25637 of 2015 in the case of M/s.Sri Ratna Electricals.

For Petitioner : Mr.P.Rajkumar
in all WPs.

For Respondent : Ms.G.Dhana Madhri,
in all WPs. Government Advocate

C O M M O N   O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate appearing for the respondent.

2. With the consent on either side, the writ petitions are taken up for taken up for disposal.

3. This Court would have fully justified in dismissing the writ petitions on the ground that the petitioner has effective alternative remedy of filing an appeal before the Appellate Deputy Commissioner (CT), Trichy. One more reason that would have been a proper reason to dismiss the writ petitions is on the ground that the petitioner did not file their objections to the revision notice dated 21.02.2018. However, considering the peculiar facts and circumstances of the case, this Court is inclined to grant one more indulgence to the petitioner. This is so because of the Circular issued by the Commissioner of Commercial Taxes in Letter dated 04.11.2013 with regard to application of Section 19(20) of Tamil Nadu Value Added Tax Act, 2006.

4. The petitioner's case is that there is no sales suppression as alleged by the respondent for the impugned five assessment years and what was received by them is discount from the manufacturers from whom they purchased cement. Admittedly, this detail was not made known by the dealer to the respondent and it came to light only after a surprise inspection in the place of business of the petitioner on 04.10.2016.

5. Be that as it may, the issue which would fall for consideration is whether the petitioner was granted discount by the seller and if there is a discount, then, the petitioner is entitled to take umbrage under Section 19(20) of the TNVAT Act. In this regard, the Circular issued by the Commissioner of Commercial Taxes dated 04.11.2013 would be relevant, wherein, the Commissioner has directed the following three steps to be taken note of by the Assessing Officer. They being:

> "1.Identification of cases in which huge ITC is accumulated on account of lesser sale price than the purchase price.
> 2.The above facts have to be ensured by verifying the purchase and sale price per unit.
> 3.If the above two things are found in a business concern, the quantum of ITC which exceeds the output tax shall be reversed."

6. Admittedly, the above referred steps have not been taken note of by the Assessing Officer while completing the

assessment. As noticed above, the petitioner did not give their objections to the revision notice dated 21.02.2018. Therefore, the Assessing Officer cannot be blamed for completing the assessment in the manner done. However, taking note of the fact that the petitioner is a small dealer and there is a circular issued by the Commissioner with regard to the applicability of Section 19(20) of the TNVAT Act coupled with the fact that a decision has been rendered by the Hon'ble Division Bench in the case M/s.Giant Cement Trading Pvt. Ltd., v. The Assistant Commissioner (CT) Chrompet Assessment Circle in W.A.Nos.1038 to 1040 of 2015 dated 05.08.2015, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer. However, this opportunity shall be subject to certain conditions. In fact, more or less an identical case was considered by the Hon'ble Division Bench in Giant Cement Trading Pvt. Ltd (cited supra) and the Court set aside the assessment orders and remanded the matter to the Assessing Officer in the light of the Circular of the Commissioner dated 04.11.2013 and re-do the assessments.

7. In the light of the above discussion, the writ petitions are disposed of by directing the petitioner to remit 10% of the disputed tax for each of the assessment years within a period of three weeks from the date of receipt of a copy of this order. If the said amount is remitted within the time permitted, then the petitioner is entitled to treat the impugned assessment orders as show cause notices and submit their objections within a period of 10 days thereafter. On receipt of the objections, the respondent shall afford an opportunity of personal hearing, peruse the documents that may be produced by the petitioner, verify the genuineness of the stand taken by the petitioner that discounts have been granted by the selling dealer and re-do the assessment in accordance with law. If the petitioner fails to comply with the condition imposed in this order within the time permitted, the benefit of this order will not enure to the petitioner and the writ petitions would stand automatically dismissed without further reference to this Court, leaving it open to the parties to proceed in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

svki

To

The Commercial Tax Officer,
Jayankondan Assessment Circle.

+1cc to Mr.P.Rajkumar, Advocate sr.no.35726
+1cc to Special Government Pleader in sr.no.36321

W.P.Nos.12712 to 12716 of 2018

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