IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.24482 to 24484 of 2018
and
W.M.P.Nos.28500 to 28502 of 2018

Tvl. Sakthi Cycle Traders,
Represented by its Proprietress Tmt.G.Saraswathi,
No.2/6, Main Bazaar, Neyveli - 3.
..Petitioner(in W.P.Nos.24482 to 24484 of 2018)

Vs.

1.The Appellate Deputy Commissioner (CT),
Cuddalore - 607 001.

2.The Commercial Tax Officer,
Cuddalore Taluk - 607 001.
..Respondents (in W.P.Nos.24482 to 24484 of 2018)

Prayer:-

Writ Petition No.24482 of 2018 filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records in respect of the Appellate Order Appeal No. & Year 326/2015 VAT dated 24.05.2018 passed by the first respondent in respect of the assessment year 2011-2012 under the Tamil Nadu Value Added Tax Act, 2006, quash the same and direct the first respondent to pass a fresh appeal order in respect of the correct subject matter of the appeal.

Writ Petition No.24483 of 2018 filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records in respect of the Appellate Order Appeal No. & Year 325/2015 VAT dated 24.05.2018 passed by the first respondent in respect of the assessment year 2012-2013 under the Tamil Nadu Value Added Tax Act 2006, quash the same and direct the first respondent to pass a fresh appeal order in respect of the correct subject matter of the appeal namely the order TIN: 33434400163/2012-13 dated 21.04.2015 passed by the Second Respondent under Section 22(6) of the said Act.

Writ Petition No.24484 of 2018 filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records in respect of the Appellate Order Appeal No. & Year 326/2015 VAT dated 24.05.2018 passed by the first respondent in respect of the assessment year 2013-2014 under the Tamil Nadu Value Added Tax

Act, 2006, quash the same and direct the first respondent to pass a fresh appeal order in respect of the correct subject matter of the appeal.

For Petitioner : Mr.Aditya Reddy
(in W.P.Nos. 24482 to 24484 of 2018)
For Respondents: Mr.M.Hariharan,
Additional Government Pleader (Tax)
(in W.P.No. 24482 to 24484 of 2018)

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondents. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. All these three writ petitions are filed challenging the orders of the First Appellate Authority in dismissing the appeals filed in respect of assessment years 2011-2012, 2012-2013 and 2013-2014. Though a statutory appeal against the said order is available before the Tamil Nadu State Sales Tax Appellate Tribunal, the present writ petitions are filed before this Court, mainly on the reason that the First Appellate Authority has passed the impugned orders in total non- application of mind, as discussed hereunder.

3. The Assessing Authority, in pursuant to the issuance of the notices of proposal, passed the orders of assessment in respect of those three assessment years on 28.01.2015, 23.01.2015 and 23.01.2015. The Assessing Officer found that the petitioner did not file the monthly returns in Form-I or Annul Return in I-1 under the Tamil Nadu Value Added Tax Act, 2006, disclosing the sales turnover as required under Section 21 of the TNVAT Act, 2006. Thus, the Assessing Officer apart from imposing the tax, also levied penalty under Section 22(5) of the said Act. The petitioner, on receipt of such assessment orders, filed the petitions under Section 22(6) of the TNVAT Act, 2006, by enclosing monthly returns for each assessment year with a request to consider the returns so filed, by cancelling the best judgment order and to make a fresh assessment.

4. The Assessing Officer, by orders dated 21.04.2015, however, rejected the said petitions, by observing that the reason adduced for non-filing of monthly returns in time was not satisfactory. The said orders dated 21.04.2015, of the Assessing Officer was put to challenge before the Appellate Authority. However, the Appellate Authority proceeded to decide appeals, based on the original orders of assessment passed on 28.01.2015, 23.01.2015 and 23.01.2015, without considering the fact that the present appeals are filed against the subsequent orders of the Assessing Officer dated 21.04.2015.

5. Therefore, it is evident that the First Appellate Authority has misconceived the appeals, as though the one filed against the original orders of assessment, without considering the fact that the very appeals were filed against the subsequent orders passed by the Assessing Officer dated 21.04.2015. Therefore, it is apparent that the First Appellate Authority has not applied his mind to the facts and circumstances and the subsequent orders of the Assessing Officer as stated supra. In view of the above stated facts and circumstances, this Court is of the view that the First Appellate Authority has to re-consider the appeals once again and pass orders on the same on merits and in accordance with law, taken into consideration the subsequent orders passed by the Assessing Officer dated 21.04.2015.

6. Accordingly, all these writ petitions are allowed and the impugned orders of the first respondent are set aside. Consequently, the matter is remitted back to the first respondent to re-consider the appeals, based on the grounds raised by the petitioner and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the assessment, as it is for the Appellate Authority to consider and decide, while disposing the appeals. No costs. Consequently, connected miscellaneous petitions are closed.

krk/mk

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT),
Cuddalore - 607 001.

2.The Commercial Tax Officer,
Cuddalore Taluk - 607 001.

+1cc to Mr.S.P.Ashokan, Advocate Sr 64452
+1cc to the Spl.GP.(Taxes)Sr 64699

KR/16/10/18