IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.24933 to 24936 of 2018
and
WMP Nos.28976 to 28979 of 2018

Ms.Grindwell Norton Limited
Rep. by its Authorised Signatory
Mr.V.A.Manikandan
No.8, Ground Floor,
44th Street, Ashok Nagar
Chennai-600 083. ..Petitioner
(in WP.Nos.24933 to 24936 of 2018)

Vs.

1.The Assistant Commissioner (CT)
Ashok Nagar Assessment Circle
Greams Road, PAPJM Buildings
Chennai-600 006.

2.The Commercial Tax Officer
Group-I, Enforcement (Central)
Greams Road, PAPJM Buildings
Chennai-600 006. ..Respondents
(in WP.Nos. 24933 to 24936 of 2018)

Writ petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent in TIN.33920441857/2012-2013, 2013-2014, 2014-2015 and 2015-2016 respectively dated 20.08.2018 passed pursuant to the surprise inspection conducted by the second respondent dated 23.11.2017 quash the same as without jurisdiction, illegal, unreasonable, arbitrary apart from being violative of Article 286 of the Constitution of India read with Section 3 of the Central Sales Tax Act, 1956.

For Petitioner : Mr.V.Sundareswaran
(in WP.Nos. 24933 to 24936 of 2018)

For Respondents : Mr.M.Hariharan
Additional Government Pleader
(in WP.Nos. 24933 to 24936 of 2018)

C O M M O N O R D E R

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

2. All these writ petitions are filed by one and the same petitioner, challenging the orders of assessment passed in respect of the assessment years 2012-2013, 2013-2014, 2014-2015 and 2015-2016 dated 20.08.2018.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

4. The main grievance expressed in these writ petitions against the impugned orders is that the very inspection conducted in the month of November 2017 under the Tamil Nadu Value Added Tax, Act, 2006, that too, after coming into force of the Goods and Service Tax on 01.07.2017, followed by furnishing the audit note, which formed the basis for passing the impugned orders, is erroneous and without jurisdiction. It is also contended that the Assessing Officer has imposed tax under the TNVAT Act, in respect of an issue for not furnishing C-Forms, when such issue has to be dealt with only under the Central Sales Tax Act and not under the TNVAT Act. Therefore, the petitioner seeks indulgence of this Court to interfere with the impugned orders of assessment.

5. On the other hand, the learned Additional Government Pleader contended that as the petitioner has not filed their reply to the notices of proposal, they are not entitled to maintain the present writ petitions.

6. A careful perusal of the facts and circumstances would show that the petitioner having received the notices of proposal, has not filed any objections before the Assessing Officer, by raising all the above contentions. Therefore, in my considered view, it is for the petitioner to either approach the Assessing Officer and file a petition under Section 84 of the TNVAT Act, for rectification or file a regular appeal before the First Appellate Authority. Whether the above contentions raised by the petitioner are sustainable in law or not, is for the concerned authority to consider, either while considering the application filed under Section 84 of the TNVAT Act, or while considering the appeal, as this Court is not expressing any view on such contention, as of now. Without exhausting those remedies, the petitioner is not entitled to canvass all these points before this Court.

7. At this juncture, the learned counsel for the petitioner submits that the petitioner would approach and file an application under Section 84 of the TNVAT Act, before the Assessing Officer within a period of seven days. Therefore, he contended that till an application to be filed by the petitioner is decided by the Assessing Officer, no coercive action shall be taken against the petitioner.

8. Upon considering the above stated facts and circumstances, this Court is of the view that it is for the petitioner to either file a statutory appeal or file an application under Section 84 of the TNVAT Act, as stated supra. Since the petitioner has come forward to file such application under Section 84 of the TNVAT Act, before the Assessing Officer, all these writ petitions are disposed of, without expressing any view on the merits of the claim made by the petitioner, only by granting liberty to the petitioner to file such application within a period of seven days from the date of receipt of a copy of this order, by enclosing all the material documents. If any such application is filed, the Assessing Officer shall consider the same on its own merits and pass orders in accordance with law, after giving due opportunity of hearing to the petitioner, within a period of three weeks from the date of receipt of the application. Till an order is passed by the Assessing Officer in such application, no coercive action shall be taken against the petitioner. If no application is filed within the time stipulated supra, the respondents are at liberty to proceed with the impugned proceedings in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT)
Ashok Nagar Assessment Circle
Greams Road, PAPJM Buildings
Chennai-600 006.

2.The Commercial Tax Officer
Group-I, Enforcement (Central)
Greams Road, PAPJM Buildings
Chennai-600 006.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.65351
+1cc to the Government Pleader, S.R.No.65616

W.P.Nos.24933 to 24936 of 2018

NMI(CO)

rrs 11/10/2018