IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13374 to 13376 of 2018
and W.M.P.Nos.15755 to 15760 of 2018

M/s.Sri Lakshmi & Co.,
Rep. by its Proprietor, L.Chandramohan,
320, Market Road, Pollachi,
Coimbatore District. ... Petitioner in all W.Ps.

-vs-

The Assistant Commissioner (CT),
Pollachi (East) Assessment Circle,
Pollachi, Coimbatore District. ... Respondent in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33952262191/2007-08, 2008-09 and 2009-10 respectively dated 20.03.2018 and to quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate (Taxes)

C O M M O N O R D E R

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate for the respondent. With consent on either side, these writ petitions are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") has filed these writ petitions challenging the assessment orders

under the TNVAT Act for the assessment years 2007-08, 2008-09 and 2009-10. Initially, the petitioner had exercised option under Section 3(4) of the TNVAT Act and had filed Form K return for the assessment year 2007-08. On coming to know that the turnover is likely exceeding Rs.50,00,000/- in January, 2006 and they will be no longer eligible for the assessment under Section 3(4) of the TNVAT Act, the petitioner submitted a representation on 26.02.2008 to the respondent along with Form I return for the whole year. In the said representation, the petitioner undertook to pay the taxes as per the Form I return from February, 2008. The respondent / Assessing Officer accepted the same without any demure and sent a letter dated 30.07.2009, stating that the petitioner has filed Form K return for the assessment year 2009-10 and already filed Form K returns along with monthly tax dues for the assessment years 2007-08 and 2008-09 and since the turnover for the year 2007-08 exceeded Rs.50,00,000/-, the petitioner has to file Form I returns and the balance value added tax has to be paid. The respondent pointed out that no Form I return was filed for the assessment years 2008-09 and 2009-10 and directed the petitioner to immediately file the same. On receipt of the said notice, the petitioner by representation dated 28.08.2009, enclosed Form I returns along with purchase list for the period from April 2008 to March 2009 [2008-09] and April 2009 to June 2010 [2009-10] and mentioned that for the month of July 2009, they have already submitted Form I return via e-filing and on receipt of such representation, the respondent issued a notice dated 18.03.2014, stating that on verification of the monthly returns filed by them for the year 2007-08, it reveals that the turnover has crossed Rs.50,00,000/-. Hence, the petitioner is not eligible to file Form K returns and they have to pay tax at the rate of 12.5% for the entire turnover in the year 2007-08 and accordingly after giving credit to the tax already paid, proposed to demand a sum of Rs.7,29,773/-. This has been followed by an identical notice dated 01.02.2017. On receipt of the notice, the petitioner submitted their reply dated 16.03.2017, pointing out that they have opted to pay tax under Section 3(4) of the TNVAT Act for the assessment years 2007-08, 2008-09 and 2009-10 and they were all accepted by the Assessing Authority and not at all rejected by the authority. However, on the lapses having been brought to the notice of the petitioner during June 2009, they immediately filed Form I return from April 2007 to March 2008, which was also accepted by the then Assessing Authority and the Assessing Authority by notice dated 30.07.2009, directed them to file Form I return along with tax due, if any, for the assessment years 2008-09 and 2009-10 and in obedience, they have filed Form I returns for the period from April 2008 to June 2009. In the meanwhile, for the period from July 2009 onwards, e-Form I returns were filed. Therefore, the petitioner contended that the notices demanding differential rate of tax for all the three years are incorrect.

3. Further, it was pointed out that it was only a mutual mistake for which the petitioner alone cannot be held responsible and the rate of tax adopted at the rate of 12.5% for the entire sales turnover is incorrect and improper. The petitioner further stated that the purchase and effect sales of goods are taxable at the rate of 4% as well as at the rate of 12.5% and this can be verified from the Form I return manually filed for the period from April 2007 to June 2009. The petitioner specifically requested for an opportunity of personal hearing.

4. On a perusal of the impugned assessment order, I find that the Form I returns filed by the petitioner have not been considered. Apart from that, there is an inherent error in the impugned order, because opportunity of personal hearing was not granted, though specifically sought for. Above all, the respondent should have taken note of the fact that it is Department, which sent notice to the petitioner on 30.07.2009 directing them to file Form I return for the years 2008-09 and 2009-10. Therefore, the respondent is open to consider the manual returns, which have already been filed, with regard to rate of tax, since the petitioner has specifically stated that the effect sales of goods is taxable at the rate of 4% as well as at the rate of 12.5%. All the above defects would vitiate the impugned proceedings calling for interference.

5. Accordingly, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall fix a date for personal hearing, verify the records that the petitioner produce, verify the Form I return, which was filed pursuant to the direction of the Department dated 30.07.2009 and redo the assessment in accordance with law including the rate of tax to be levied. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Pollachi (East) Assessment Circle,
Pollachi, Coimbatore District.

+1cc to Mr.S.Ramanathan, Advocate sr.no.37175
+1cc to Special Government Pleader(Taxes), in sr.no.37651

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nr 26/06/2018