IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos. 28493 to 28496 of 2017
and
W.M.P.Nos.30613 to 30616 of 2017

Rent Works India Private Ltd.,
rep.by its Director
Alan Van Neikerk ...Petitioner in all WPs

Vs.

The Assistant Commissioner (ST),
Royapettah Assessment Circle,
46, Pasumpon Muthuramalingam Road,
Chennai - 600 028. ...Respondent in all WPs.

Common Prayer: Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for records on the files of the Respondent herein in TIN/33230781397/2006-07, 2007-08, 2008-2009, 2009-10 dated 28.09.2017 respectively and quashing the same.

For Petitioner in all W.Ps. : Mr.N.Inbarajan

For Respondent in all W.Ps. : Mrs.G.Dhanamadhri
Government Advocate

COMMON ORDER

Heard Mr.N.Inbarajan, the learned counsel appearing for the petitioner and Mrs.G.Dhanamadhri, the learned Government Advocate, accepting notice on behalf of the respondent. Since the issue involved in these Writ Petitions and the parties are one and the same, with the consent on either side, these Writ Petitions were taken up together and disposed of by this common order.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Valued Added Tax Act, 2006 (TNVAT Act), has approached this Court, challenging the orders of assessment passed under the provisions of TNVAT Acct 2006 for the assessment years 2006-07, 2007-08, 2008-2009 and 2009-10 respectively, dated 28.09.2017.

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3. At the time, when these Writ Petitions were entertained, this Court considered the submissions of the learned counsel appearing for the petitioner and recorded his submissions, and passed an order on 08.11.2017, the operative portion, of which, reads as follows:-

> " 3. Before this Court mentions the grounds raised by the petitioner, it is to be pointed out that four different Assessing Officers dealt with the matter and each one of them issued a revision notice commencing from the year 2013 and last of such notices was issued by the present incumbent Mr.K. Vasanthakumar on 14.7.2016.
>
> 4. On a perusal of the impugned assessment orders, one would find it very difficult to cull out as to what is the finding of the Assessing Officer. There had been unnecessary references to the earlier notices. Certain portions of the earlier notices have been extracted. Therefore, this Court does not approve the manner, in which, the assessment orders have been drafted.
>
> 5. Be that as it may, this Court will have to consider the contentions raised by the petitioner. There are two issues arising in these cases namely
>
> (i) reversal of input tax credit in respect of the transactions where the dealer did not produce the original bills; and
>
> (ii) leasing of goods in the course of import purchase to SEZ units. Apart from the above two issues, penalty has been levied for all the assessment years.
>
> 6. So far as the first issue, namely the reversal of input tax credit, wherever the petitioner fails to produce original bills, is concerned, this Court proposes to confirm the reversal to the extent where the bills are not produced. However, this Court finds that though initially that was the proposal, without making the final assessment, the respondent reversed the entire claim of input tax credit.

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7. With regard to lease transaction, the respondent rejected the petitioner's contention primarily on the ground that the petitioner has not filed documents as called for in the notice dated 12.5.2014. Though the petitioner did not specifically state before the respondent as to why they did not produce those documents, it is submitted by the learned counsel for the petitioner in the course of arguments that those documents have been seized by the Enforcement Wing officials, who inspected the place of business on 09.7.2010 and in spite of the petitioner making a request to return those documents, the Department has not considered the petitioner's request. Therefore, it is submitted that if one opportunity is given, the petitioner would be able to obtain the documents and produce the same before the Assessing Officer or the Assessing Officer himself can call for the files from the Enforcement Wing Officials. In the above circumstances, it has to be seen as to whether there was jurisdiction in levying penalty under Sections 27(1) and 27(2) of the said Act.

8. Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent and seeks time to get instructions in the matter. The Assessing Officer is directed to give written instructions to the learned Government Advocate well before the next hearing date. Till the matter is heard and finally disposed of, no coercive action shall be initiated against the petitioner in furtherance of the impugned assessment orders. List on 28.11.2017."

4. Though specific written instructions have not been given to the learned Government Advocate, the learned Government Advocate seeks to sustain the impugned assessment orders and contend that the petitioner has an effective and efficacious alternate remedy of filing Appeal before the Appellate Authority, and without exhausting such remedy, the petitioner has approached this Court by way of these Writ Petitions.

5. Under normal circumstances, this Court would have accepted the plea raised by the respondent , but not in this case. As observed by this Court, in its order, dated

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08.11.2017, it is very difficult to cull out, as to what is the finding of the Assessing Officer, as there has been unnecessary references to the earlier notices. Apart from that, there has been no discussions, as regards the documents, which were produced by the petitioner and added to this, four Officers have dealt with the assessment files, and presumably, this has caused a confusion, resulting in the impugned proceedings.

6. Therefore, this Court is of the view that the assessments should be redone, and while redoing the assessments and passing final assessment orders, the Assessing Officer shall record whatever is relevant for the purpose of deciding the issue and need not verbatim repeat all the averments set out in the notices issued from 2013 onwards.

7. Accordingly, these Writ Petitions are allowed and the impugned assessment orders are set aside and the matters are remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

sd/klt

To

The Assistant Commissioner (ST),
Royapettah Assessment Circle,
46, Pasumpon Muthuramalingam Road,
Chennai - 600 028.

+1cc to Mr.N.Inbarajan, Advocate SR.No.3919
+1cc to Special Government Pleader SR.No.4646

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MP(CO)
GN(09/02/2018)

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