In the High Court of Judicature at Madras

Dated : 20.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.14213 to 14217 of 2018
& WMP.Nos.16784 to 16788 of 2018

M/s.Empress Audio, rep.by its
Proprietrix, No.19/1-48, Wallers Road
Chintadripet, Chennai-2 ...Petitioner in all WPs

Vs

The Assistant Commissioner (CT),
Chintadripet Assessment Circle,
Chennai-6. ...Respondent in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent in TIN Nos.33540581552/2010-11, 33540581552/2011-12, 33540581552/2012-13, 33540581552/2013-14 and 33540581552/2014-15, all dated 17.8.2017, quash the same as illegal and passed against the various decisions of this Court and direct the respondent to pass fresh orders after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Baktha Siromani
For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is aggrieved by the impugned assessment orders passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years 2010-11 to 2014-15.

3. The challenge to the impugned orders is only on two issues namely with regard to mismatch between Annexure I of the petitioner and Annexure II of the selling dealers and also with regard to trade discounts given to the petitioner.

4. On a perusal of the impugned assessment orders, this Court finds that the petitioner gave their objections. However, the Assessing Officer would state that at the time of inspection, the petitioner deposed before the Inspecting Officials that they would go through their records and file a detailed reply before the Assessing Officer, which they have not

done and in the absence of details, the contention raised by the petitioner is not tenable.

5. The petitioner, in their reply dated 24.2.2016 to the revision notices dated 29.12.2015, stated that they could not be held responsible for the failure of the selling dealers to file sales details in Annexure II and that reversal of the input tax credit could not have been made even provisionally as per the decision of this Court in the case of Infiniti Wholesale Limited Vs. AC(CT) [WP.No.9265 of 2013 dated 06.11.2014]. It was further stated that no details of suppliers or copies of the proceedings of cancellation of registration of those suppliers or Gazette Notification were given in the notices.

6. With regard to trade discounts, in their reply dated 24.2.2016, the petitioner also stated that levy on the said turnover is against the provisions of the said Act. It was further stated that the turnover is well reflected in the books of accounts as well as the balance sheets. The petitioner also contested the levy of penalty on the ground that there is no willful suppression of any turnover.

7. However, the respondent would state that though the petitioner stated that the purchase and the sales bills were enclosed along with the objections, the petitioner did not file the same and therefore, the respondent overruled the objections.

8. When the case came up for hearing on 13.6.2018, this Court directed the learned Additional Government Pleader to accept notice for the respondent and get instructions. It appears that the Assessing Officer has been informed about these writ petitions and that they would heard today. However, no written instructions were given to the learned Additional Government Pleader.

9. Be that as it may, the respondent could have effectively considered the objections filed by the petitioner. So far as the mismatch issue is concerned, the petitioner is entitled to be given full details and in the absence of details, an effective objection cannot be filed. With regard to the trade discounts received, if the petitioner has not produced the purchase and the sales bills, the respondent could have directed the petitioner to do so by appearing before him and without following such a procedure, it would be incorrect on the part of the respondent to complete the assessment in the manner done in this case.

10. With regard to the allegation that the petitioner effected sales at a price lower than the purchase price, the respondent should take into consideration the stand taken by the petitioner. In such circumstances, the procedure to be adopted by the respondent has been spelt out by the Commissioner of Commercial Taxes in Circular No.29/2015 dated 11.8.2015 and in paragraph 6 of the said circular, Assessing Officers have been directed to follow a particular procedure to ascertain as to whether there has been a sale lesser than the purchase price.

The respondent has not taken note of the said circular issued by the Commissioner of Commercial Taxes.

11. Furthermore, in a recent decision of the Hon'ble Supreme Court in the case of M/s.Maya Appliances (P) Ltd. Vs. Additional Commissioner of Commercial Taxes [reported in (2018) 53 GSTR 49], the issue relating to trade discounts was considered. The petitioner is entitled to place this decision before the respondent for his consideration, as this Court is inclined to remand the matter to the Assessing Officer to consider these two issues.

12. Accordingly, the writ petitions are partly allowed and the findings rendered in the impugned assessment orders with regard to mismatch and with regard to trade discounts are set aside. The respondent is directed to afford an opportunity of personal hearing to the petitioner and if any details are required by the petitioner, the same shall be furnished and one more opportunity can be granted giving one month time to the petitioner to submit a comprehensive reply. After affording an effective opportunity of personal hearing, the respondent is directed to redo the assessments under those to heads. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT), Chintadripet Assessment Circle,Chennai-6.

+1cc to Mr.C.Baktha Siromani, Advocate Sr.No.39042
+1cc to Special Government Pleader Sr.No.39077

RJ(CO)
sm:4.7.2018

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