In the High Court of Judicature at Madras

Dated : 20.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.14800 to 14802 of 2018
& WMP.Nos.17494 to 17496 of 2018

Tvl.V.P.Traders, rep.by its
Partner J.Titus Samwin

...Petitioner in the WPs

Vs

The Assistant Commissioner (ST),
Rasipuram Assessment Circle,
Rasipuram.

...Respondent in the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the files of the respondent in TIN : 33853160466/2010-11, TIN : 33853160466/2012-13 and TIN : 33853160466/2013-14, respectively all dated 27.4.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner in all WPs: Mr.R.Senniappan

For Respondent in all WPs: Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is aggrieved by the impugned assessment orders dated 27.4.2018 for the years 2010-11, 2012-13 and 2013-14 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner has challenged the impugned orders on the ground that they are in violation of principles of natural

justice and that the respondent has failed to follow the settled legal position that so long as the purchasing dealer had complied with the requirements as given in Rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007, the claim of the purchasing dealer could not be denied by the Department.

4. In my considered view, this aspect could have been gone into by respondent provided the petitioner responded to the notice dated 28.7.2017.

5. The learned counsel for the petitioner has submitted that the impugned order is clearly contrary to the law laid down by this Court in various decisions and that this Court may entertain the writ petition.

6. From the impugned assessment order, this Court finds that after the revision notice dated 28.7.2017 was issued by the respondent and received by the petitioner, the respondent also furnished invoice-wise particulars in respect of the mismatch, which were noticed. Therefore, there is a duty cast upon the dealer to respond to such a notice and explain their Assessing Officer that what has been proposed in the notice dated 28.7.2017 is not tenable. Without following such procedure, the dealer should not be permitted to avail the extraordinary remedy being exercised by this Court under Article 226 of The Constitution of India, as the assessment proceedings have to be done in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006, which is a complete Code by itself. However, considering the fact that the petitioner states that they have all details to prove the genuineness of the transactions, this Court is inclined to grant one more opportunity to the petitioner, however, subject to a condition.

7. Accordingly, the writ petitions are disposed of directing to the petitioner to pay 15% of the tax demanded for each of the assessment years within a period of three weeks from the date of receipt of a copy of this order. If the said condition is complied with, the petitioner is entitled to treat the impugned orders as show cause notices and submit their objections within a period of two weeks therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessments in accordance with law. It is made clear that if the petitioner fails to comply with the condition imposed, the benefit of this order will not enure to the petitioner and the writ petitions will stand automatically dismissed giving liberty to the respondent to initiate recovery proceedings. On the other hand, if the petitioner complies with the said condition, the demand of the

balance tax and penalty for the assessment years 2010-11, 2012-13 and 2013-14 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST), Rasipuram Assessment Circle, Rasipuram.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.38643

+1cc to the Spl Government Pleader, S.R.No.39080

WP.Nos.14800 to 14802 of 2018&
WMP.Nos.17494 to 17496 of 2018

AD(CO)
GSP(31/07/2018)