IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.SIVAGNANAM

W.P.Nos.22443 to 22447 of 2013
and M.P.Nos.1 to 1 of 2013

M/s.Centuary Processing Mills,
rep. by its Proprietor Mr.G.Dilip Kumar,
7, M.S.A.M. Tannery Street,
Sakthi Cross Road,
B.P.Agraharam, Erode - 5. ... Petitioner in all W.Ps.

..Vs..

The Assistant Commissioner (CT),
Periya Agraharam Assessment Circle,
ERode - 9. ... Respondent in all W.Ps.

Prayer in W.P.No.22443 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No.33883075817/2008-2009 dated 28.06.2013 and quash the same as illegal.

Prayer in W.P.No.22444 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No.33883075817/2009-2010 dated 28.06.2013 and quash the same as illegal.

Prayer in W.P.No.22445 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No.33883075817/2011-2012 dated 28.06.2013 and quash the same as illegal.

Prayer in W.P.No.22446 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a

Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No.33883075817/2012-2013 dated 28.06.2013 and quash the same as illegal.

Prayer in W.P.No.22447 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No.33883075817/2013-2014 dated 28.06.2013 and quash the same as illegal.

For Petitioner in all W.Ps. : Mr.S.Ramanathan

For Respondent in all W.Ps. : M/s.G.Dhana Madhri
Government Advocate

COMMON ORDER

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and M/s.G.Dhana Madhri, learned Government Advocate appearing for the respondent.

2.The petitioner who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006, (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act) is aggrieved by the impugned notices dated 28.06.2013, by which, the respondent has stated that since the seller has not paid the output tax till the date of the notice the petitioner is not eligible to avail input tax for the assessment years 2008-2009, 2009-2010 and 2011-2012 to 2013-2014. The petitioner's case is that without even issuing show cause notice where a proposal has been made to reverse the input tax credit availed apart from demanding 50% penalty.

3.The learned counsel for the petitioner placed reliance on the decision of this Court in the case of (Althaf Shoes (P) Ltd., v. Assistant Commissioner (CT), Chennai reported in [(2012) 50 VST 179 (Mad) for the proposition that so long as the purchasing dealer has complied with the requirements as given under Rule 10(2), the claim of the purchasing dealer could not be denied by the Department.

4.The learned Government Advocate has produced the written instructions given by the respondent to the learned Special Government Pleader vide communication dated 11.02.2014. In the said para-wise comments, it has been mentioned that notice was issued to the petitioner to cause production of connected original bills and proof of payment of tax.

5.The learned counsel for the petitioner would submit that no such notice was received by the petitioner.

6.The annexures given along with the letter addressed to the learned Special Government Pleader by the respondent dated 11.02.2014 shows that a notice dated 13.09.2013 has been issued to the petitioner, wherein the respondent probably realising the mistake in straight away issuing the demand as per the impugned notice dated 28.06.2013 has modified the notice and requested the respondent to cause production of original invoices of the same, namely, Guru Chemicals, Erode along with proof for payment of bills either by cheque or demand draft so as to enable the Department to take further action against the seller whose profile reveals that there was no such sales during the year. The petitioner was given 15 days time to produce those records. This notice dated 13.09.2013 was issued after the writ petition was filed and an order of stay was granted on 16.08.2013. Therefore, the petitioner appears to have not acted in furtherance to the amended notice dated 13.09.2013. Since the respondent has himself realized the mistake and issued a modified notice, the impugned notices cannot be enforced.

7.Accordingly, the writ petitions are allowed, the impugned orders are set aside and the respondent is directed to re-issue the notice dated 13.09.2013 giving adequate time to the petitioner to cause production of the records along with their objections which shall be considered and dealt with in accordance with law after affording an opportunity of personal hearing to the authorized representative of the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Periya Agraharam Assessment Circle,
ERode - 9.

+1cc to Special Government Pleader SR.No.1678
+1cc to Mr.S.Ramanathan Advocate SR.No.1301

W.P.Nos.22443 to 22447 of 2013
and M.P.Nos.1 to 1 of 2013

SDR 03.02.2018