IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos. 34543 to 34548 of 2016
and
W.M.P. Nos.29762 to 29767 of 2016

W.P.No.34543 of 2016

M/s.Venus Surgicals Pvt. Limited
Rep by its Managing Director
Mr.M.Chinna Narayanan
Plot No.1954, 39th Street
I Block, Anna Nagar, Chennai - 600 040.
...Petitioner in all WPs

Vs.

1.The Assistant Commissioner (CT)
Amaindakarai Assessment Circle
No.F-50, I Main Road, 2nd Floor
Anna Nagar East, Chennai - 600 102.

2.The Deputy Commissioner (CT)
Enforcement (Central) PAPJM Buildings
Greams Road, Chennai - 600 006. ... Respondents in all WPs

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in TIN/33731021100/2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 respectively and dated 31.08.2016 and quash the same since being implementation of the VAT Audit Report of second respondent in VA-3A/4/2014-15 dated 31.07.2015 without considering the replies filed and contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran (in all WPs)

For Respondents : Mr.M.Hariharan (in all WPs)
Additional Government Pleader

COMMON ORDER

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondents.

2.The petitioner, who is a registered dealer on the file of the first respondent, is an aggrieved by the assessment order for the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 under the provisions of the Tamil Nadu Value added Tax Act, 2006 (in short "the TNVAT Act).

3.The impugned orders have been challenged on the ground of violation of principles of natural justice. In fact, this was specifically noted by this Court while granting an interim order dated 30.09.2016 by passing the following order :-

> "Mr.K.Venkatesh, learned Government Advocate accepts notice on behalf of the respondents.
>
> Heard both sides.
>
> The learned counsel for the petitioner submitted that though the petitioner had filed two objections, the first of which on 09.11.2015 and the second objection filed before the officer on 20.05.2016 and 01.07.2016, without reference to these objections which where accompanied by documents, the first respondent has completed the assessment stating as if, the petitioner has not produced the documents.
>
> To examine the correctness of this submission, the learned Government Advocate is directed to get instructions in this matter and to file a counter.
>
> In the light of the above, there will be an order of interim stay. List on 07.11.2016"

Though the above order has recorded what is the submission of the petitioner till date, the respondents have not filed their counter affidavit. Therefore, it can be safely presumed that the respondents have no case to defend the averments set out by the petitioner in these writ petitions.

4.The petitioner's only grievance is that though he had submitted a further objection on 08.06.2016 with regard to purchase suppression, sale suppression and cross verification from other dealer Annexure I and Annexure II from website, enclosing copies of the relevant documents, which were acknowledged by the office of the first respondent on 10.06.2016 by affixing their seal and signature, the Assessing Officer failed to note the same while passing the impugned assessment order dated 31.08.2016.

5.On a perusal of the impugned order, I find that the Assessing Officer has stated that the petitioner has not produced documents. It is not known as to why the documents, which were received in the office of the first respondent on 10.06.2016, were not considered. The endorsement made in the letter delivery book has not been denied by the second respondent. Therefore, it is deemed that all the records were available with the respondents when he passed the impugned assessment order. Therefore, fairness in procedure would require that the dealers' objection though given in two sets should be considered, otherwise, the assessment proceedings itself would become an empty formality.

6.Therefore, for the above reasons, the impugned assessment are required to be redone. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded back to the first respondent for fresh consideration, who shall consider the petitioner's objections dated 09.11.2015 and 08.06.2016 along with enclosures received in the office of the first respondent on 10.06.2016, after affording an opportunity of personal hearing to the authorised representative of the petitioner and if any clarifications are required, the same should be called for by the Assessing Officer and duly clarified by the dealer and thereafter, the assessment shall be redone by passing a speaking order. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Speaking /Non-speaking order

To

1.The Assistant Commissioner (CT)
Amaindakarai Assessment Circle
No.F-50, I Main Road, 2nd Floor
Anna Nagar East, Chennai - 600 102.

2.The Deputy Commissioner (CT)
Enforcement (Central) PAPJM Buildings
Greams Road, Chennai - 600 006.

+1cc to M/s.V.Sundareswaran, Advocate sR.no.6344
+1cc to Government Pleader Sr.No.7164

CNR(CO)
sm:19.2.2018