IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.4456 to 4459 of 2018
&
W.M.P.Nos.5467 to 5470 of 2018

Tvl.Sri Ponkaliyamman Traders
Represented by its Proprietor
K.Palanisami
No.27, East Raja Street
Chennimalai ... Petitioner
in all writ petitions

Vs.

The Deputy State Tax Officer
Perundurai
Erode District-638 011 ...Respondent
in all writ petitions

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records on the files of the respondent in TIN No.33592922959/2012-13, 33592922959/2013-14, 33592922959/2014-15 and 33592922959/2015-16 dated 01.11.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.G.Dhana Madhri
Government Advocate

C O M M O N O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Ms.Dhana Madhri, learned Government Advocate appearing for he respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed these writ petitions challenging the Assessment orders for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16. So far as the impugned assessment orders for the first three years are concerned, the reasons assigned by the Assessing Officer is identical. The respondent Assessing Officer has stated in the impugned Assessment Orders that the petitioner, at the time inspection by the Enforcement Wing, has accepted the sales suppression and paid the difference of tax on the suppressed turn over. Therefore, the objection given by the petitioner for those years cannot be considered. The reason given by the Assessing Officer in the Assessment orders for those three years is incorrect. Even assuming that the petitioner has accepted the sales suppression and difference in tax was collected by the Enforcement Wing officials, that will not preclude the petitioner from now raising objection after receipt of the revision notice and the three years, objections should have been dealt with on merits. This is more so because, learned counsel for the petitioner submitted that the additions were made by the Enforcement wing officials on ad-hoc basis without any proper verification. Therefore, the assessment for the first three years is required to be redone.

3. So far as the assessment for the years 2015-16 is concerned, the petitioner's objections have been dealt with by the Assessing officer and the proposal in the show-cause notice dated 15.09.2017 was confirmed on the ground that the petitioner has not produced any records for explaining the stock difference. Learned counsel for the petitioner submitted that if one opportunity had been granted to the petitioner, they would produce all necessary documents to show that the allegation of stock difference is not substantiated and what was done by the Enforcement Wing officials was only an estimation.

4. Learned Government Advocate appearing for the respondent pointed out that in terms of proviso to Section 3(4)(b) of the Tamil Nadu Value Added Tax Act, 2006, a dealer, whose turn over reached Rs.50 lakhs during the previous year shall not be entitled to exercise an option to pay compounded rate of tax for the subsequent years. Therefore, it is submitted that the Enforcement Wing having found that the turn over has exceeded, the question of exercising option under Section 3(4)(b) does not arise in the subsequent years. This can be considered by the Assessing officer only after examining the facts and circumstances of the case. Since the petitioner would submit that addition made by the Enforcement wing was without any basis, considering the facts and circumstances of the case, this Court is of the view that one more opportunity can be granted to the petitioner to go before the Assessing officer.

Accordingly, all these writ petitions are disposed of by directing the petitioner to treat the impugned Assessment Orders as show-cause notices and submit their objection within 15 days from the date of receipt of a copy of this order. Along with the objection, all necessary records should be enclosed explaining the stock difference. On receipt of the explanation/objection, the respondent is directed to afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law within 45 days from the date of receipt of objection from the petitioner. Till then, no coercive action shall be initiated against the petitioner. It is open to the petitioner to canvass all points including levy of interest under Section 42(3) of the TNVAT Act, 2006. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

gpa

To

The Deputy State Tax Officer
Perundurai
Erode District-638 011

+1cc to Mr.R.Senniappan, Advocate SR.No.26752
+1cc to Special Government Pleader(Taxes) SR.No.26449

W.P.Nos.4456 to 4459 of 2018 &
W.M.P.Nos.5467 to 5470 of 2018

GN(26/04/2018)