IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.26655, 26658, 26661 & 26668 of 2018
and
WMP.Nos.31025, 31028, 31041, 31042, 31034, 31035,
31036 & 31040 of 2018

M/s.Bhuvaneswari Tyres (Defunct)
Rep. by its Proprietor - S.Rajasekar
No.148/B, Nalar Street,
Virudhampet Road, Katpadi Road,
Vellore, Vellore District. ... Petitioner (in all WPs)

Vs.

The Commercial Tax Officer
Gudiyatham (East) Circle
Gudiyatham, Vellore District. ... Respondent (in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARI, calling for the records on the file of the respondent in its impugned proceedings made in TIN No.33134245322/2011-2012, 2012-2013, 2013-2014 & 2014-2015 respectively dated 27.01.2016 quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.M.Hariharan
Additional Government Pleader

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. All these writ petitions are filed by one and the same petitioner. The petitioner is aggrieved against the orders of assessment dated 27.01.2016 passed in respect of the assessment years 2011-2012 to 2014-2015.

3. The grievance of the petitioner before this Court is in twofold. Firstly, in respect of mis-match issue, the orders of assessment are not in consonance with the directions issued by this Court in a batch of cases made in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). Secondly, it is contended that the Assessing Officer has erroneously levied tax at the rate of 14.5% twice for the same assessment years and therefore, such erroneous levying of tax twice is not sustainable.

4. The learned Additional Government Pleader appearing for the respondent submitted that the petitioner did not file any reply to the notices of proposal. He also submitted that the petitioner has come before this Court and challenged the impugned proceedings after a period of nearly 2 1/2 years. Even though he contended so, he fairly admitted to the position that the Assessing Officer has arrived the tax quantum at the rate of 14.5% twice for the same assessment year, which is not permissible.

5. Heard both sides.

6. The petitioner is a dealer in tyres. In respect of the above said assessment years, the Assessing Officer has issued the notices of proposal. However, the petitioner did not file their reply. The reason for not filing such reply is stated in the affidavit filed in support of the writ petitions, by contending that the respondent did not furnish any details of purchase made by the petitioner for all the assessment years and that the Assessing Officer made the assessment solely based on the details available in the Departmental Website. Therefore, it is stated that the petitioner was not able to correlate the transactions said to have been taken place in all these assessment years.

7. There is no dispute to the fact that the issue involved in all these assessment years is with regard to mis-match and insofar as the said issue is concerned, this Court has already considered the same and issued certain guidelines and directions as to how the mis-match issue has to be dealt with by the Assessing Officer, by adopting centralized mechanism, in an order made in a batch of cases in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). Perusal of the impugned orders would show that the Assessing Officer has not adopted such method while completing the assessment. Above all, it is evident that the Assessing Officer has imposed the tax at the rate of 14.5% twice for the same assessment year, firstly, while arriving at the purchase value of the tyres from other dealers as per the Departmental website and again, after having freight charges and gross profit added to the purchase value already arrived. Therefore, it is apparent that the Assessing Officer has

erroneously made the assessment by imposing the tax twice on the same turn over. Therefore, this Court is of the view that the matter has to go back to the Assessing Officer to re-do the assessment afresh. At the same time, this Court is of the view that the petitioner should be put on some terms since they have not filed their reply to the notices of proposal and that they have approached this Court after a period of 2 1/2 years.

8. Considering all these facts and circumstances, these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment on the following terms and conditions:

(a) The petitioner shall pay 15% of the tax liability and file their reply to the notice of proposal for each assessment year within a period of three weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply and payment of 15% of the tax liability within the time stipulated supra, the Assessing Officer shall inform the date of personal hearing to the petitioner in writing.

(c) On completion of such personal hearing, the Assessing Officer shall pass the orders of assessment afresh by following the guidelines/directions issued in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), within a period of eight weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Commercial Tax Officer
Gudiyatham (East) Circle
Gudiyatham, Vellore District.

+4cc to Mr.S.Rajasekar, Advocate sr.no.70316 to 70319
+1cc to Special Government Pleader sr.no.70219

W.P.Nos.26655, 26658,
26661 & 26668 of 2018

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