IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27535 & 27565 of 2018
and
WMP.Nos.32046, 32054, 32092 & 32096 of 2018

M/s.Vinayaga Pipe Industries
Rep. by its Partner-P.Sivaanandam
Navalpakkam Village
Cheyyar Taluk
Tiruvannamalai District. ... Petitioner
(in both WPs)

Vs.

The State Tax Officer
Vandavasi
Tiruvannamalai District. ... Respondent
(in both WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN:33964602327/2011-2012 and TIN:33964602327/2010-2011 respectively dated 31.08.2018 as illegal and contrary to the provisions of the Act and quash the same.

For Petitioner : Mrs.R.Hemalatha
(in both Wps)

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)
(in both WPs)

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate 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. The petitioner is aggrieved against the orders of assessment dated 31.08.2018 passed in respect of the assessment years viz., 2010-2011 and 2011-2012.

3. Heard both sides.

4. The main grievance of the petitioner before this Court is that the Assessing Officer has mechanically confirmed the proposal without considering the objections filed by the petitioner independently, uninfluenced by the report of the Inspecting Officials. Thus, it is contended that the Assessing Officer, being quasi judicial authority has to apply his independent mind to the objections raised against the notice of proposal and thereafter, to pass the orders of assessment, based on sound reasons and findings.

5. On the other hand, the learned Government Advocate contended that the assessment orders were passed after giving due opportunity of hearing to the petitioner to place their objections and the Assessing Officer has considered the objections and concluded the assessment, accordingly. Though it is stated so, the learned Government Advocate is not disputing the fact that the Assessing Officer has not given his own independent reasons and findings on the objections raised by the petitioner except by brushing aside the same as an after thought.

6. In respect of the subject matter assessment years, the Assessing Officer has issued the notices of proposal and called upon the petitioner to file their objections. It is an admitted fact that the petitioner filed their objections and the same was also received by the Assessing Officer. Perusal of the assessment orders would show that the Assessing Officer has basically placed his reliance on the report filed by the Inspecting Officials and the so-called admission said to have been made by the Assessee before such Officials at the time of inspection, for conclusion of assessment. Thus, the Assessing Officer has brushed aside the objections made to the notice of proposal as an after thought. Needless to state that the Assessing Officer having called upon the petitioner to file the objections as against the proposal, ought to have considered those objections independently and passed the assessment orders, by giving the reasons and findings as to how such objections are not sustainable/acceptable. The Assessing Officer is not entitled to simply place his reliance on the inspection report to come to a conclusion as if the objections raised are an after thought. At the same time, this Court is not expressing any view on the merits of the objections raised by the petitioner or the merits of the orders of assessment, as it is for the Assessing Officer to consider and decide the same independently. Therefore, this Court is of the view that on the above said reason alone, the matter has to go back to the Assessing Officer to re-do the assessment, after considering the objections raised by the petitioner and passing the orders once again afresh on merits and in accordance with law. It is also seen that the

petitioner was not afforded with any personal hearing before passing the assessment orders, more particularly, when the same also imposed penalty on the petitioner under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006.

7. Considering all these aspects, these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment once again afresh, after considering the objections raised by the petitioner and also after providing an opportunity of personal hearing to them. The Assessing Officer shall pass fresh orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

mk

To
The State Tax Officer
Vandavasi
Tiruvannamalai District.

+2 CC to Mrs.R.Hemalatha, Advocate sr 72784, 72785.
+1 CC to Spl. Govt. Pleader sr 73078.

W.P.Nos.27535 & 27565 of 2018

PVS(CO)
SP(08/11/2018)