IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 09.11.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.27857 of 2018
and
W.M.P.Nos.32391 & 32399 of 2018

M/s.Vinayaga Pipe Industries
Rep. By its Partner-P.Sivaanandam,
Navalpakkam Village,
Cheyyar Taluk,
Tiruvannamalai District. ..Petitioner

Vs.

The State Tax Officer,
Vandavasi,
Tiruvannamalai District. ..Respondent

PRAYER: Writ Petition 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:33964602327/2013-14 dated 31.08.2018 as illegal and contrary to the provisions of the act and quash the same.

For Petitioner : Mr.S.Rajasekar

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

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 31.08.2018 passed in respect of the assessment year 2013-14.

3. It is the contention of the petitioner before this Court that the Assessing Officer has not applied his mind to the objections raised by the petitioner and on the other hand, has mechanically passed the impugned order of assessment without assigning any independent reasoning and finding. It is further

contended by the petitioner that there were two issues before the Assessing Officer, out of which, the first issue is in respect of the “other income”. According to the petitioner, though they have given a detailed explanation as to how such amount shown as “other income” is not taxable since it is incentive and discounts received for post purchase, the Assessing Officer has not considered the same and rejected the objection without giving any finding. Likewise, in respect of the other issue, namely, ''purchase suppression'' is concerned, it is contended that the Assessing Officer has not given any independent reasoning on the objections raised by the petitioner except to state that the assessment has been correctly done in respect of the difference in purchase turn over. It is further contended that the Assessing Officer has not given personal hearing to the petitioner, especially, when he has chosen to levy penalty under section 27(4) of TNVAT Act.

4. On the other hand, the learned Government Advocate submitted that since the impugned order of assessment was passed after giving due opportunity of hearing to the petitioner, no interference is called for by this Court.

5. I have given my careful consideration to the above submissions made by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent and also perused the impugned order of assessment.

6. As rightly pointed out by the learned counsel for the petitioner, the Assessing Officer has rejected the objection raised by the petitioner mechanically without assigning any reasons as to how such objections are not entertainable. When the petitioner has chosen to contend that the “other income” referred to in the notice of proposal is an income received by way of incentive and discounts received for post purchase, it is for the Assessing Officer to consider such objections based on the documents filed by the petitioner. Without doing so, the Assessing Officer has simply rejected the said objection. Likewise, in respect of the purchase suppression issue is concerned, the Assessing Officer, though extracted the objections raised by the petitioner, has not stated with his independent reasoning as to how such objection is not maintainable. The Assessing Officer has only has only stated that the assessment has been correctly done in respect of the difference in purchase turn over. Likewise, the Assessing Officer has also not given personal hearing to the petitioner, especially, when he has chosen to levy penalty under section 27 (4) of the said Act. Therefore, on these reasons, this Court is inclined to remit the matter back to the Assessing Officer to redo the assessment once again after giving due opportunity of personal hearing to the petitioner.

7. Accordingly, the writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the

assessment on merits and in accordance with law, after giving due opportunity of hearing to the petitioner, by giving independent reasoning and finding. It is made clear that this Court is not expressing any view on the merits of the matter as it is for the Assessing Officer to consider and decide. The whole exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Vandavasi,
Tiruvannamalai District.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.76926.
+1cc to the Special Government Pleader(taxes), S.R.No.77403.

W.P.No.27857 of 2018

SJ(co)
ssm 29.11.2018