IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33874, 33877, 33882, 33883 & 33885 of 2018
and
W.M.P.Nos.39341, 39343, 39344, 39347 & 39348 of 2018

TVL. Kalyan Jewellers,
No.171, Omalur Main Road,
Salem. ... Petitioner in all W.Ps.

vs.

The Assistant Commissioner (ST),
Arisipalayam Circle,
Salem. ... Respondent in all W.Ps.

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the impugned orders of re-assessment in TIN No.33222844350 of 2009-10, 2010-2011, 2011-2012, 2012-13 dated 30.11.2018 respectively and in TIN No.33222844350 of 2013-14 dated 07.12.2018 from the files of the respondent herein and quash the same.

For Petitioner : Mrs.Aparna Nandakumar
in all W.Ps.

For Respondent : Mr.V.Haribabu,
in all W.Ps. Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the orders of assessment dated 30.11.2018 and dated 07.12.2018 passed in respect of assessment years 2009-10 to 2012-13 and 2013-14 respectively.

2. Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent. By consent, all these writ petitions are taken up for final disposal at the stage of admission itself.

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3. The grievance of the petitioner before this Court against the orders of assessment is in respect of two issues only viz, ITC reversal as per annual scrutiny cross verification report and ITC reversal on exempted sales. In other words, it is the contention of the petitioner that they are not disputing their liability determined by the Assessing Officer by considering the other issues.

4. In so far as the disputed two issues referred to supra, it is the grievance of the petitioner that the Assessing Officer has not considered the detailed objection raised by the petitioner and on the other hand, he has chosen to pass the assessment order without giving any reasoning and finding on those objections.

5. The learned counsel for the petitioner submitted that merely because the other end dealers have reported only the part of the sale effected to them and not all the sales and tax thereon, the petitioner cannot be faulted and imposed with the tax liability, especially, when they have the purchase invoices with them for claiming the ITC. The learned counsel further contended that had a personal hearing been given to the petitioner by the new Officer, who passed the impugned orders of assessment, they would have satisfied the Assessing Officer as to how the finding arrived by him on the above said two issues are factually incorrect.

6. The learned Additional Government Pleader for the respondent, on the other hand, submitted that the impugned orders of assessment were passed after considering the objections raised by the petitioner and also affording an opportunity of personal hearing. Therefore, he submitted that the petitioner cannot have any grievance.

7.Heard both sides.

8. It is seen that the dispute between the parties is only in respect of the two issues viz., ITC reversal as per annual scrutiny cross verification report and ITC reversal on exempted sales. In other words, petitioner is not having any grievance against the assessment orders passed in respect of the other issues. It is seen that in respect of the disputed issues, the petitioner, in pursuant to the notice of proposal, has sent a detailed reply on 12.05.2015 and 14.05.2016.

9. Though the Assessing Officer extracted the whole reply in the assessment orders, has however, not dealt with in detail with his independent reasoning and finding as to how those objections raised by the petitioner are not sustainable. On the other hand, the Assessing Officer, simply rejected the objections by stating that copies of purchase invoices were not

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filed by the petitioner. Moreover, as it is claimed by the petitioner that the petitioner cannot be faulted, if the other end dealers have not reported part of the sale effected to them and paid the tax thereon, especially, when the petitioners are having the purchase invoices, this Court is of the view that the Assessing Officer can consider the matter afresh, more particularly, under the circumstances that the assessment orders came to be passed, without hearing the petitioner, by the new Assessing Officer, since the earlier personal hearing given was by the previous Officer.

10. Accordingly, these writ petitions are allowed and the impugned orders of assessment, in so far as those two issues are concerned, are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment in respect of those two issues, after giving due opportunity of hearing to the petitioner. Such 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

//True Copy//

Sub Assistant Registrar

gsi/vri

To

The Assistant Commissioner (ST),
Arisipalayam Circle,
Salem.

+1cc to Mr.Aparna Nandakumar, Advocate, S.R.No. 88267
+1cc to the Special Government (Taxes) Pleader, S.R.No. 89108

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GJ(CO)
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