BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)Nos.15846 to 15853 of 2018
and
W.M.P(MD)Nos.14182 to 14189 of 2018

Tvl.A.M.T.R.Sivanesa Nadar & Co.,
represented by its
Partner,R.S.Prithiviraj,
41, Pillaiyar Koil Street,Sivakasi. ... Petitioner in All cases

Vs.

The State Tax Officer-3,
Commercial Tax Building,Sivakasi. ... Respondent in All cases

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for records in TIN No.33576000101/2006-07, 2007-08,2008-09,2009-10,2010-11,2011-12,2012-13 and 2013-14 respectively dated 07.06.2018 and quash the same as illegal and against the principles of natural justice.

For Petitioner (in All cases) : Mr.S.Karunakar
For Respondent (in All cases) : Mr.A.Muthukaruppan Additional Government Pleader

COMMON ORDER

Challenging the impugned orders passed by the respondent in TIN No.33576000101/2006-07;TIN No.33576000101/2007-08; TIN No.33576000101/2008-09; TIN No.33576000101/2009-10; TIN No.33576000101/2010-11; TIN No.33576000101/2011-12; TIN No.33576000101/2012-13; TIN No.33576000101/2013-14;dated 07.06.2018, the petitioner is before this Court.

2. According to the petitioner, they are a partnership firm registered under the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act']. They filed the returns for the assessment years from 2006-07 to 2013-14 for the partnership firm. During the inspection conducted by the Enforcement Wing officials on 20.04.2014, it was noticed that out of four partners, two partners already expired and one partner retired from partnership on and from 20.12.2004 and only one partner is now living and running the business. Therefore, the partnership firm is automatically changed into proprietorship firm. In view of the change of constitution, the registration of the partnership firm shall be deemed as cancelled one. Therefore, the inspecting officials made a report that the petitioner has wrongly availed the Input Tax Credit. Based on the report submitting by the inspection team, the assessing authority has issued a revision notice dated 27.10.2015. The petitioner has submitted their objections on 01.12.2015 affirming that the concern is only a

partnership firm and not a proprietorship one. The petitioner has also enclosed the partnership deed for the verification of the assessing authority. Even though the receipt of the objections was acknowledged by the assessing authority, based on the sworn statement given to the Enforcement Wing officials dated 20.05.2014, the proposals were confirmed, by orders dated 07.06.2018, which are under challenge before this Court.

3. I have heard the rival contentions.

4. A perusal of the records submitted before this Court goes to show that the partnership firm was established on 01.06.1992 having three partners, namely, (1) S.Bagyalakshmi; (2) R.S.Prithiviraj and (3) R.S.Sivaprakasam and one A.Hema Vathsala was inducted on 01.04.2000 as a fourth partner. Thereafter, on 30.06.2000, the said R.S.Sivaprakasam, one of the partners in the company opted to retire. Again on 01.07.2000, it was reconstituted to three partners, namely, (1) S.Bagyalakshmi; (2) R.S.Prithiviraj and (3) A.Hema Vathsala.

5. It appears that the said S.Bagyalakshmi had also passed away and after her demise, the other two partners, namely, R.S.Prithiviraj and A.Hema Vathsala are continuing as partners.

6. The learned Counsel for the petitioner has also drawn the attention of this Court to the GST Registration made by the very same firm, which reveals that the constitution of business is shown as a partnership firm and hence, GSTIN No.33AABFA8025C1Z5 is allotted. Therefore, it is seen that the petitioner is continued as a partnership firm having (1) R.S.Prithiviraj and (2) A.Hema Vathsala as partners of the firm. Therefore, the report submitted by the inspection team is patently erroneous.

7. It is well settled by various judgments of this Court and also the instructions issued by the Head of the Commercial Taxes Department that the report sent by the inspection team cannot be taken as face value. The assessing authority has a duty to evaluate the correctness of the statements made therein, on the basis of the documents available before him. If required to call for documents for verification from the dealer. After verifying all these things, the assessing authority shall independently formulate the proposals and call for objections.

8. In the instant case, the report sent by the inspection team was taken as gospel truth and the assessing authority failed to verify the correctness of the statements. Be that as it may, the petitioner has filed his objections and produced the partnership deed to show that it is a partnership firm. At least, in that event, the assessing authority should have applied his mind to the documents produced by the petitioner. But without applying his mind, has gone by the statements made before the Enforcement Wing officials. Again, this is another discrepancy. The dealers are

forced to sign in the statements made during the inspection. It cannot be treated as voluntary statements obtained that can be relied on for the purpose of deciding the revision.

9. Again, it is reiterated that the assessing authority shall independently apply his mind to the fact situation and then, arrive at a conclusion. In the instant case, all these norms are violated. The petitioner firm was construed as a proprietorship firm on the basis of the report submitted by the Enforcement Wing officials and the Input Tax Credit was reversed without considering the objections and without hearing the petitioner on this aspect, much less the documents submitted in support of the partnership firm.

10. In such circumstances, I am inclined to set aside the orders passed by the respondent in TIN No.33576000101/2006-07;TIN No.33576000101/2007-08; TIN No.33576000101/2008-09; TIN No.33576000101/2009-10; TIN No.33576000101/2010-11; TIN No.33576000101/2011-12; TIN No.33576000101/2012-13; TIN No.33576000101/2013-14; dated 07.06.2018 and remand the matters back to the respondent for fresh consideration. The respondent shall consider the objections raised by the petitioner and after affording an opportunity of personal hearing, shall pass orders on merits within a period of one month from the date of receipt of a copy of this order.

11. Accordingly, all these writ petitions are disposed of as above. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
The State Tax Officer-3,
Commercial Tax Building,Sivakasi.

+2CC to Mr.S.Karunakar, Advocate, SR.Nos. 75450,75451
+1CC to the Special Government Pleader SR.No. 75659

W.P(MD)Nos.15846 to 15853 of 2018 and
W.M.P(MD)Nos.14182 to 14189 of 2018
27.07.2018

RSB
ES/SKN/RSK/SAR 4/03.09.2018/3P/5C