BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.14402 and 14403 of 2013
and
M.P.(MD).Nos.1 & 1 of 2013

M/s.Yentop Manickam Edible Oil (P) Limited,
rep. by its Director,
No.123, Kutchery Road,
Virudhunagar. : Petitioner in W.P.(MD).14402/13

M/s.Manickavel Edible Oil (P) Limited,
rep. by its Director,
No.123-A, Kutchery Road,
Virudhunagar. : Petitioner in W.P.(MD).14403/13

Vs.

The Commercial Tax Officer-I,
Virudhunagar Assessment Circle,
Virudhunagar. : Respondent in both W.Ps

PRAYER in W.P.(MD).No.14402/2013: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 3342721260/2012-2013, quash the notice, dated 07.03.2013 issued therein.

PRAYER in W.P.(MD).No.14403/2013: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33535721442/2012-2013, quash the notice, dated 07.03.2013 issued therein.

In both W.Ps:

For Petitioner : Mr.R.L.Ramani, Senior Counsel for Mr.S.Raja Jeyachandra Paul

For Respondent : Mr.S.Dhayalan Government Advocate

******

COMMON ORDER

The petitioners are dealers in edible oil. In respect of the assessment year 2012-13, a revision notice was issued to the petitioners on 07.03.2013. The details of turn over and input tax credit claim for the assessment year 2012-13 upto the month of January 2013 were taken into account. The revision notice has been challenged in these writ petitions on the ground that it is premature.

2. According to the learned Senior Counsel appearing for the petitioners, the returns were filed for the assessment year 2012-13 before April 2013. The authority has not passed any assessment order. As per Section 22(2) of TN VAT Act, 2006, every dealer is deemed to have been assessed after a lapse of six months. In the present case, the dealer should deemed to have been assessed on 31.10.2013. But the assessing authority issued a notice under Section 27(B) of the Act on 07.03.2013 itself. The notice issued by the respondent that too considering the turn over for a period between April 2012 and March 2013, is in fact premature and unsustainable. Questioning its validity, he preferred the above writ petitions.

3. Controverting the allegations, the learned Special Government Pleader submits that the notice was issued under Section 25 of TNVAT Act, requesting the petitioners to reverse the claim of input tax credit, as per Section 19(4) of the TNVAT Act. Since the petitioner claimed exemption against Form F declaration, but without reversal of input tax credit, as prescribed under Section 21 r/w Section 19(4) of the TNVAT Act, the impugned notice was issued to the petitioner, requesting them to make reversal of input tax credit under Section 25 of the TNVAT Act. Thus, the notice issued by the Assessing Officer is valid and in accordance with law. Hence, the claim of the petitioners is not sustainable and the writ petitions are liable to be dismissed.

4.Heard the contentions made on either side.

5. Admittedly, the impugned notice dated 07.03.2013 was issued under Section 27(4)(i) of the TNVAT Act. A perusal of the impugned notice would show that the dealer was called to show cause to the proposals and as to why penalty should not be imposed under Section 27(4)(i) of the TNVAT Act, within 7 days from the date of receipt of that notice. In the case of returns filed by the dealer, an assessment order accepting the same has to be made by the Assessing Authority. If such assessment order is not passed, the dealer shall be deemed to have been assessed for the year after the lapse of six months i.e the 31^{st} day of October of the succeeding year. In the instant case, no assessment order has been passed till date. In that event, as per Section 22(2) of the TNVAT Act, the assessment is deemed to have been completed with

effect from 31st October 2013. Whereas, the impugned notice was issued on 07.03.2013 under Section 27(4)(i) of the Act. Hence, such a notice is premature in the eyes of law.

6.As contended by the learned Senior Counsel, the details for the period between April 2012 and January 2013 alone is taken into account and but it requires more particulars with regard to the remaining month also. Therefore, this Court is of the view that the impugned notice issued is not only premature but also issued in piecemeal and hence, it is not sustainable in the eyes of law. Accordingly, the impugned notice is liable to be set aside.

7.Accordingly, the impugned notices, dated 07.03.2013 in both the writ petitions are set aside. However, it is made clear that it is open to the respondent to issue a fresh notice as the deemed assessment is taken effect from 31.10.2013. The respondent is entitled to issue fresh notice incorporating the turn overs pertaining to the entire period for the assessment year 2012-2013. On such notice being issued, the petitioner shall file his objections and co-operate with the Assessing Officer in completing the proceedings. Before passing the final order, the Assessing Authority shall afford an opportunity of personal hearing to the petitioner.

8.The writ petitions are disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-IC)

To

The Commercial Tax Officer-I,
Virudhunagar Assessment Circle,
Virudhunagar.

+ 1 CC TO Mr.S.RAJA JEYA CHANDRA PAUL, ADVOCATE IN SR No. 73419
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 73535

VS
TE/RP/SAR-4 : 07/08/2018 : 3P/4C

Common Order made in
W.P(MD)Nos.14402 and 14403 of 2013
17.07.2018