IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 04.02.2019

CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos. 2173, 2175,2178,2179 ,2180
and
WMP.Nos.2414, 2418, 2419, 2421, 2424 of 2019

1.Tvl. Uthamchand Jewellers,
No.37, Bazaar Street,
Thirukazhukundram,
Kancheepuram District-603 109
Representd by its Proprietor,
U.Dilipkumar,
No.37, Bazaar Street,
Thirukazhukundram,
Kancheepuram District. ...Petitioner in all the five W.Ps.

Vs

1. The Assistant Commissioner (CT),
Thirukazhukundram Assessment Circle,
Commercial Tax Department
Station No.42, Wahab Nagar,
Thirukazhukandram.

2.The Deputy Commercial Tax Officer,
Group-II Enforcement,
Thiruvallur. ..Respondents in all the five W.Ps.

....

Prayer in W.P.No.2173 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order (or) direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in TIN/33451602769/2012-13 dated 16.10.2018 and quash the same and consequently direct the respondents to conduct fresh enquiry and pass assessment order for the year 2012-13 and other order (or) orders.

Prayer in W.P.No.2175 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order (or) direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in TIN/33551605333/2016-17 dated 30.10.2018 and quash the same and consequently direct the respondents to conduct fresh enquiry and pass assessment order for the year 2016-17 and other order (or) orders.

Prayer in W.P.No.2178 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order (or) direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in TIN/33451602769/2014-15 dated 16.10.2018 and quash the same and consequently direct the respondents to conduct fresh enquiry and pass assessment order for the year 2014-15 and other order (or) orders.

Prayer in W.P.No.2179 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order (or) direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in TIN/33451602769/2015-16 dated 16.10.2018 and quash the same and consequently direct the respondents to conduct fresh enquiry and pass assessment order for the year 2015-16 and other order (or) orders.

Prayer in W.P.No.2180 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ order (or) direction in the nature of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in TIN/33451602769/2013-14 dated 16.10.2018 and quash the same and consequently direct the respondents to conduct fresh enquiry and pass assessment order for the year 2013-14 and other order (or) orders.

For Petitioner : Mr. B. Ramesshkumar

For Respondents : Mr. V. Haribabu, AGP (Taxes)

COMMON ORDER

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondents. At request and by consent of both parties, the Writ Petitions itself are taken up for final disposal.

2. The petitioner in these writ petitions challenges the orders of assessment passed by the Assistant Commissioner, Commercial Taxes, Thirukazhikandram dated 16.10.2018 and 30.10.2018 in relation to the Assessment Years from 2012-13 to 2016-17.

3. The main ground agitated by the learned counsel for the petitioner, Mr.B.Ramesshkumaar is that no opportunity has been afforded to the petitioner prior to the framing of the impugned assessments.

4. On a perusal of the impugned orders, it seen that the assessments have been framed after inspection by the officials of

the Enforcement Wing, Thiruvalur on 20.06.2017, wherein certain defects are stated to have been noticed. The inspecting Officials pointed out variations in stock and have quantified the same. The assessment authority has issued notices dated 16.10.2018 and 30.10.2018 proposing to reject the returns filed by the petitioner as incorrect and incomplete and proposed to revise the assessment in terms of section 84 of the Value Added Tax Act, 2006 (in short 'Act') on the basis of the report of the inspecting authorities.

5. The assessment orders state that notices were issued to the dealers and objections invited and, admittedly, submitted by the petitioners. However, the order is silent as to the contents of the objections raised and application of mind by the Assessing Officer thereupon as well as his reasons for rejection thereof. In my view, the order is cryptic and no effective opportunity of hearing appears to have been granted to the assessee/petitioner.

6. An order of assessment has to be a speaking one, containing reasons for the adjustments and additions effected revealing application of mind to the objections raised by the assessee and for rejection thereof, if the officer is not inclined to accept the same. The orders impugned do not satisfy the requirements and are non-speaking and bereft of reasons.

7. In this view of the matter, the assessments are set aside. The Assessing Authority is directed to redo the same after affording an opportunity to the assessee who shall appear before him at the first instance on 25.02.2019 at 10.30 a.m. The assessments shall be completed after affording due opportunity to the petitioner within a period of two (2) months from the date of conclusion of personal hearing.

8. The Writ Petitions are allowed in the aforesaid terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn/sl

To

1.The Assistant Commissioner (CT),
Thirukazhukundram Assessment Circle,
Commercial Tax Department Station No.42,
Wahab Nagar, Thirukazhukandram.

2.The Deputy Commercial Tax Officer,
Group-II Enforcement, Thiruvallur.

+1cc to Mr.B.Ramessh Kumaar, Advocate, S.R.No.9258
+1cc to the Government Pleader, S.R.No.9865

W.P.Nos. 2173, 2175,2178,2179 ,2180
& WMP.Nos.2414, 2418, 2419, 2421, 2424 of 2019

KS(CO)

rrs 27/02/2019