IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.9208 TO 9211 OF 2010
AND
M.P.NOS.1 TO1 OF 2010, M.P.NOS.1 TO 1 OF 2014
AND
M.P.NOS.2 & 2 OF 2014 IN W.P.NOS.9210 & 9211 OF 2010
AND
M.P.NOS.3 TO 3 OF 2014 IN W.P.NOS.9209 TO 9211 OF 2010

Ambal Enterprises,
Through its Proprietor
Mr.U.Sekar, No.30,
New Thandavarayan Street,
Old Washermenpet,
Chennai - 21. ...Petitioner in all WPs

Vs

1. The Commissioner of Commercial Taxes,
State of Tamil Nadu,
Ezhilagam, Chennai.

2. Assistant Commissioner (CT/FAC),
Vannarapettai - II Assessment Circle,
No.20, Kummaiamman Koil Street,
Chennai - 51. ...Respondents in all WPs

PRAYER in W.P.No.9208 of 2010:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, setting aside and quashing Circular No.1/2009 dated 30.11.2009 issued by the 1st respondent as illegal, ultra vires of Section 19 read with Rule 10(6)(b)(ii)(C) of the TNVAT Rules and other applicable provisions.

PRAYER in W.P.No.9209 of 2010:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, setting aside and quashing the assessment order dated 12.03.2010 made in TIN/33041282264/2006-07 by 2nd respondent for the assessment year 2006-07 as illegal.

PRAYER in W.P.No.9210 of 2010:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, setting aside and quashing the assessment order dated 12.03.2010 made in TIN/33041282264/2008-09 by 2nd respondent for the assessment year 2008-09 as illegal.

PRAYER in W.P.No.9211 of 2010:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, setting aside and quashing the assessment order dated 12.03.2010 made in TIN/33041282264/2007-08 by 2nd respondent for the assessment year 2007-08 as illegal.

For Petitioner (in all WPs) : Mr.R.Saravana Kumar

For Respondents (in all WPs) : Mrs.Dhanamadhri, GA

COMMON ORDER

The petitioner herein has challenged a Circular dated 30.11.2009, issued by the 1st respondent herein in connection with a clarification to the effect that "wherever any credit notes are to be issued for discount or sales incentives by any dealer to another dealer after issuing tax invoice, the selling dealer shall pass a credit note without disturbing the tax component on the price in the original tax invoice, so as to retain the quantum of input tax credit already claimed by the buying dealers as well as not to disturb the tax already paid by the selling dealer."

2. The respondents herein had filed a counter affidavit dated 20.10.2010, stating as follows:

> "It is respectfully submitted that only in such a scenario, the 1st respondent issued the Circular dated 31.11.2009 which was in the nature of eludicication of legal position. It is, however, respectfully submitted that after the advent of VAT Act, it is now well settled that the first respondent has no legal authority or power to issue any clarification and even if issued such a clarification is not binding upon any assessing authority. Inasmuch as the said circular has not legal existence per se, it is respectfully submitted that the question of quashing the same does not arise."

3. In view of the categorical statement of the respondents that the impugned circular is only a clarification and doest not have any binding effect on the Assessing Authority and also that

it has not legal existence per se, the respondents will not be justified in relying upon this circular and pass the consequent assessment order.

4. On a perusal of the assessment orders, it is seen that the respondents, during the assessment proceedings, had placed reliance on the Circular dated 30.11.2009. In view of the categorical statement of the respondents that this circular has no legal existence per se, the assessment orders itself require re-consideration.

5. Pending the writ petitions, when the amendment to Section 19(20) of the TNVAT Act, 2006 was challenged, the Hon'ble Supreme Court in a decision reported in (2016) 15 SCC 125 in the case of Jayam and Company vs. Assistant Commissioner and another, while upholding the amendment, had set aside the retrospective effect of the amendment from 01.01.2007. As such, the only grievance which the petitioner is now faced with is the impugned Circular dated 30.11.2009. Now that the respondents have also admitted that the impugned orders does not have any legal effect, the petitioner herein may not have any grievance.

6. In the light of the above observations, this Court is of the view that the assessment orders requires a re-visit, in the light of the statement of the respondents, which has been detailed above.

7. For all the foregoing reasons, the assessment orders dated 30.11.2009 and 12.03.2010, are set aside and the matter is remanded back to the 2nd respondent herein for re-consideration, in the light of the observations made in this order. The petitioner is also granted liberty to file fresh objections, within a period of 15 days from the date of receipt of copy of this order and on receipt of such objections, the respondent herein shall consider the same, after giving due opportunity of personal hearing to the petitioner and pass appropriate orders, as expeditiously as possible.

8. Accordingly, all the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Commissioner of Commercial Taxes,
   State of Tamil Nadu,
   Ezhilagam, Chennai.

2. Assistant Commissioner (CT/FAC),
   Vannarapettai - II Assessment Circle,
   No.20, Kummaiamman Koil Street,
   Chennai - 51.

+4ccs to Mr.E.Veda Bagath Singh, Advocate, S.R.No.62314 to 62317
+1cc to the Government Pleader(T), S.R.No.63005

W.P.Nos.9208 to 9211 of 2010
and M.P.Nos.1 to1 of 2010,
M.P.Nos.1 to 1 of 2014
and M.P.Nos.2 & 2 of 2014 in
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and M.P.Nos.3 to 3 of 2014 in
W.P.Nos.9209 to 9211 of 2010

VBA(CO)
CS/16/09/2019