IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.7940, 7944, 7948, 7955, 7959, 7962, 7967, 7973
and 7976 of 2019
and
W.M.P.Nos.8540, 8547, 8553, 8562, 8564, 8568, 8573, 8577
and 8578 of 2019

M/s Sree Vigneswara Marbles & Granites.,
represented by its Partner,
Mr.V.Chandrasekar,
SF No.408/3 ThirumuruganPoondi,
Avinashi Road,
Tirupur - 641 652. ...Petitioner in all W.P.'s

--Vs--

The Assistant Commissioner (ST),
Avinashi Assessment Circle,
Avinashi. ...Respondent in all W.P.'s

PRAYER in all Writ Petitions: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN:33792082732 / 2007-2008, TIN:33792082732 / 2008-2009, TIN:33792082732 / 2009-2010, TIN:33792082732 / 2010-2011, TIN:33792082732 / 2011-2012, TIN:33792082732 / 2012-2013, TIN:33792082732 / 2013-2014, TIN:33792082732 / 2014-2015 and TIN:33792082732 / 2015-2016 quash the assessment order dated 28.01.2019 as passed without considering the objections dated 21.5.2018 filed along with the copies of the purchase invoices and therefore contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and passed in violation of the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent: Mrs.G.DhanaMadhri,
Government Advocate

C O M M O N   O R D E R

Heard, Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mrs.G.DhanaMadhiri, learned Government Advocate for the respondents.

2. The short point involved in these Writ Petitions is the violation of the principles of natural justice, while passing the impugned orders of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ('Act') for the periods 2007-2008 to 2015-2016.

3.Initially, orders of assessment have been passed by the assessing authority that had been the subject matter of Writ Petition Nos. 8603 to 8611 of 2018. A learned Single Judge of this Court had considered the prayer in the Writ Petitions and by order dated 11.04.2018, set aside the impugned assessments directing the petitioner/Assessee to treat the impugned orders of assessment as show cause notice and file reply, also enclosing copies of all necessary documents, within a period of fifteen days from the date of receipt of a copy of the order of the Court. Upon receipt of such reply, the respondent was directed to fix a date for personal hearing, hear the authorized representative of the petitioner, peruse the materials placed on record and take a fresh decision on merits and in accordance with law, as expeditiously as possible.

4.Mr.P.Rajkumar, learned counsel for petitioner submitted that the petitioner filed objections on 21.05.2018 along with purchase invoices. Inspite of the same, the impugned orders dated 28.01.2019 has come to be passed by the respondent without considering objections dated 21.05.2018 and the purchase invoices annexed thereto.

5.A extract from the delivery book has been filed as part of the typed set of papers, to show receipt of objections dated 21.05.2018. It is unclear as to who has received the objections of the assessee, though the petitioner states in affidavit that the same has been received by the respondent/Assessing Officer.

6.The impugned order has been passed confirming the proposals for assessment on the ground that there is no compliance by the Assessee with the directions of this Court passed earlier i.e, to furnish the copies of the interstate purchase bills with freight details. The impugned order is extracted below:

> The Assesses have already approached twice the Honorable Madras High Court and

the Assessments were remanded with directions to the Assesses to furnish the copies of all the interstate purchase bills with freight details to decide the "Freight Issue". However, the Assesses have not complied with the directions of the Honorable High Court to furnish copies of Interstate purchase bills. In the absence of purchase bills with details of Freight the "Freight issue" that is cost, Insurance & Freight could not be decided. Thus in this circumstance there is not other alternative to the revenue than to confirm the proposal as per the notice already issue and issue orders to the best of judgment levying Tax & Penalty for the year 2007-2008 under section 27(3) fo the TNVAT Act, 2006 as shown below.

7.Mrs.G.DhanaMadhiri, learned Government Advocate appearing for the respondent was directed to obtain instructions on the specific point of whether the petitioner has indeed complied with the direction of this Court dated 11.04.2018. She confirms today that though the Assessing Officer admits that the written submissions dated 21.05.2018 and the enclosed purchase invoices appear to have been received by an official in his registry the same were unfortunately, not brought to the attention of the officer.

8.In the aforesaid circumstances, nothing more needs to be done except to set aside the impugned orders directing the Assessing Officer to take into account the reply of the Assesse dated 21.05.2018 along with enclosures. The Assesse will appear before the Assessing Officer on 10.04.2019 at 10.30 A.M. along with a copy of the objections dated 21.05.2019 and enclosures and upon consideration of the written as well as oral submissions and any other documents that the Assessee may produce, the Assessing Officer shall pass orders of assessment within a period of four weeks from date of conclusion of personal hearing.

These Writ Petitions are disposed of in the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

arr/tsg

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Avinashi Assessment Circle,
Avinashi.

+1cc to Mr.P.Rajkumar, Advocate, SR.No. 30297
+1cc to The Special Govt.Pleader, SR.No.30904

W.P.Nos.7940, 7944, 7948, 7955,
7959, 7962, 7967, 7973
and 7696 of 2019

Kak(05/04/2019)