In the High Court of Judicature at Madras
Dated : 23.4.2019
Coram
The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN
Writ Appeal Nos.1381, 1403 to 1405 and 1407 of 2019 &
CMP.Nos.9536, 9695, 9696, 9698, 9699, 9703, 9704, 9709 & 9710 of 2019

Tvl.S.P. & Co., rep.by its
partner G.Palanisamy
...Appellant/Petitioner (in all WAs)
Vs
The Assistant Commissioner (CT),
Sankari Assessment Circle,
Sankari. ...Respondent/Respondent (in all WAs)

APPEALS under Clause 15 of the Letters Patent to set aside the common order dated 03.1.2019 made in W.P.Nos.33489, 33491, 33493, 33499 and 33500 of 2018.

Prayer in WPs. Petition filed under Article 226 of the Constitution of India, to Call for the records on the files of the respondent in TIN. 33443225342/ 2011-12, 2012-13, 2013-14, 2014-2015 & 2015-2016 dated 24.09.2018 and connected assessment proceeding dated 20.09.2017 and quash the same as being without jurisdiction authority of law and contrary to the principles of natural justice.

For Appellant : Mr.R.Senniappan
For Respondent : Mrs.G.Dhana Madhri, GA

सत्यमेव जयते

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mr.R.Senniappan, learned counsel for the appellant and Mrs.G.Dhana Madhri, learned Government Advocate accepting notice for the respondent.

2. These appeals are filed by the appellant – writ petitioner, which is a registered dealer on the file of the respondent herein under the provisions of Tamil Nadu Value Added Tax Act, 2006 (for short, the Act) challenging the common order dated 03.1.2019 passed by the learned Single Judge in W.P. Nos.33489, 33491, 33493, 33499 and 33500 of 2018 in so far it relates to a condition contained in paragraph 7(a) of the impugned order.

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3. In terms of the said condition, the learned Single Judge directed the appellant to pay 15% of the tax liability for each of the assessment years namely 2011-12 to 2015-16 and file their reply to the show cause notices dated 29.6.2017.

4. The appellant's case is that the revision of assessment was based upon the alleged mismatch stated to have been reported by the Enforcement Wing Officials by comparing the returns of the appellant with that of the other end dealers. It is further submitted by the appellant that the learned Single Judge having noted that the Assessing Officer, while considering the issue pertaining to mismatch, did not follow the decision of this Court rendered by one of us (TSSJ) in the case of JKM Graphics Solutions Pvt. Ltd. Vs. Commercial Tax Officer, Vepery Assessment Circle [reported in (2017) 99 VST 343] and also while noting that the orders of assessment were passed without affording an opportunity of personal hearing, though the learned Single Judge set aside the assessment orders and the orders passed under Section 84 of the Act, he ought not to have imposed a condition on the appellant to pay 15% of the tax liability for each of the assessment years as contained in the said show cause notices dated 29.6.2017, by which, there was a proposal to revise the assessments.

5. Per contra, the learned Government Advocate seeks to sustain the common impugned order passed by the learned Single Judge by contending that the appellant did not respond to the said show cause notices and that therefore, the Assessing Officer was well justified in completing the assessments on best of judgment basis.

6. Admittedly, the Revenue has not preferred any appeal against the common impugned order passed by the learned Single Judge. It is only the assessee, which is before us questioning the condition imposed to pay 15% of the tax liability. Under normal circumstances, the Court always balances interests of the dealer and also safeguards the interests of the Revenue and such conditional orders are passed from time to time by giving liberty to the dealer to treat the assessment orders as show cause notices and submit their objections. However, in the instant case, we are precluded from resorting to such a procedure on account of the fact that the learned Single Judge quashed the orders of assessment as well as the orders passed under Section 84 of the Act.

7. In such circumstances, when the assessment orders themselves have been set aside, the question of quantifying the liability does not arise and the amounts arrived at in the said show cause notices dated 29.6.2017 should remain as proposals.

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Therefore, there cannot be a direction to pay a portion of the amounts, which have been proposed to be imposed as tax or penalty. For that reason alone, we are inclined to interfere with the common impugned order passed in the said writ petitions.

8. The learned Government Advocate points out that the appellant, in the affidavits filed in support of the said writ petitions, admitted that they paid a portion of the tax liability.

9. However, there is no material to substantiate the said admission. In any event, if such any payment is made by the appellant during the pendency of the assessment proceedings or the petitions under Section 84 of the Act or the said writ petitions, the same shall be adjusted as against the tax liability upon redoing the assessment in terms of the directions issued by the learned Single Judge.

10. For the above reasons, the writ appeals are partly allowed and the conditions imposed in paragraph 7(a) and (b) of the common impugned order dated 03.1.2019 are modified by directing the appellant to submit their reply to the said show cause notices dated 29.6.2017 within a period of two weeks from the date of receipt of a copy of this judgment. On receipt of the reply, the Assessing Officer shall fix a date for personal hearing and complete the assessment in terms of the direction issued by the learned Single Judge in paragraph 7(c) and other observations contained in paragraph 7. No costs. Consequently, the connected CMPs are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Sankari Assessment Circle, Sankari.

+1cc to Mr.R.Senniappan, Advocate, S.R.No. 39347

RS

WA.No.1381 of 2019
etc. cases

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