IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.23175 & 23180 of 2019
&
W.M.P.No.22867 & 22871 of 2019

Tvl.Hilton Polymers
Represented by its Managing Partner
Mr.A.Shareef
SF.No.233/1B-Mannur
Pollachi - 642 005 .. Petitioner in both W.Ps

Vs.

The Assistant Commissioner (ST)
Pollachi Rural Assessment Circle
Pollachi - 642 005 .. Respondent in both W.Ps

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records in respect of the Orders in TIN 33232285867/2014-15 and TIN 33232285867/2015-16 dated 14.05.2018 issued by the respondent, quash the same and direct the respondent to examine the objections filed by the petitioner and to pass orders afresh on merits .

For Petitioner : Mr.P.Ravishankar Rao

For Respondents : Mr.V.Haribabu
Additional Government Pleader

COMMON ORDER

Mr.P.Ravishankar Rao, learned counsel representing the counsel on record for writ petitioner in both these writ petitions and Mr.V.Haribabu, learned Additional Government Pleader, who has accepted notice on behalf of lone respondent in both these writ petitions are before this Court.

2. With consent of learned counsel on both sides, main writ petitions are taken up and are being disposed of by this common order.

3. This Court is informed that both these writ petitions arise out of a common factual matrix and only the assessment years are different. Obviously the numerical values are also different. This Court is informed that subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity.

4. Writ petitioner is a dealer under TNVAT Act. Writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act. This Court is informed that these two writ petitions pertain to two Assessment Years viz., 2014-15 and 2015-16 (hereinafter 'said AYs' for brevity). There was a verification of the returns filed by the writ petitioner for the said AYs and the respondent decided to embark upon the exercise of making revised Assessment Orders for said AYs. To be noted, this exercise of revised Assessment is under Section 27(1) of TNVAT Act.

5. It is not in dispute that the respondent sent revisional notice followed by a communication calling upon the writ petitioner to send objections which are dated 09.11.2017 and 22.11.2017.

6. Writ petitioner sent objections dated 01.02.2018 together with an enclosure. In the objections, writ petitioner has raised a specific point that the footwear sold by the writ petitioner are of value less than Rs.200/- (not branded) and that the same has been mentioned in Form i. Writ petitioner has also enclosed the Local Delivery Book along with the objections. As per the objections together with the enclosure placed before this Court as part of the case file, it is clear that the objections together with the enclosure have been received by the office of the respondent. The acknowledgement together with the seal is there in the objections with enclosures.

7. In the aforesaid undisputed factual position, respondent passed two Assessment Orders bearing reference TIN 33232285867/2014-15 and TIN 33232285867/2015-16,both dated 14.05.2018 for said AYs and instant writ petitions have been filed assailing these evised Assessment Orders, which shall hereinafter be referred to as 'impugned orders' in plural and 'impugned order' in singular.

8. There is no disputation or disagreement before this Court

that impugned Assessment Orders have been passed by the respondent in exercise of powers under Section 27(1) of TNVAT Act. Proviso to Section 27(1) of TNVAT Act mandates that a reasonable opportunity to show-cause against revised Assessment Order should be given to the writ petitioner.

9. In the light of the aforesaid communications, particularly the revisional notice and reminders, this Court has no hesitation in holding that the respondent has complied with the requirements in the proviso of giving a reasonable opportunity to the writ petitioner to show-cause before passing the impugned orders.

10.Learned Revenue counsel highlighted that it is not just one revisional notice and there have been two reminders calling upon the writ petitioner to sent objections and writ petitioner has sent objections only thereafter. Pointing out this, learned Revenue counsel submitted that adequate opportunities have been given to the writ petitioner to show-cause and therefore, respondent has complied with the mandate under the proviso to Section 27(1) of TNVAT Act under which the impugned orders have been passed. This Court has no hesitation in holding that the respondent has given more than reasonable opportunity to the writ petitioner to show-cause against the impugned orders. However, the problem presents itself in a different form in the instant case. In the impugned orders, after referring to revisional notice and two reminders, the respondent has held that the writ petitioner has not filed objections till the date of impugned orders and have requested for further time. It has also been held that writ petitioner had not filed any document till the date of impugned orders. This is articulated in one Paragraph of impugned orders which read as follows:

> 'Accordingly again a revision notice was issued to the dealers calling for their objections if any to the proposal in the reference 4th cited. The dealers after receiving the notice have not filed their objection till date. But in the reference 5th cited they have requested further time. But till date they have filed the necessary documents. Hence it is clear that they have no evidences to prove their contention. Hence the proposal is confirmed'

This paragraph which is ad-verbatim same in both impugned orders is factually incorrect.

11. Learned Revenue Counsel submitted that the objections, particularly enclosure to the objections, namely the Local Delivery Book would have been considered.

12. What is of importance is it should be mentioned in the

impugned orders that the objections and the enclosure have been considered and findings that are returned by the respondent Assessing Officer on the objections and enclosure should be recorded in the impugned orders. That is completely absent in the impugned orders and more importantly it mentions that no objections have been filed.

13. In the light of narrative / discussion thus far, this Court finds that this is a fit case to remit the matter back to the respondent directing the respondent to redo the revised assessment under Section 27(1) of TNVAT Act on the basis of revisional notice and the obejctions thereto together with enclosures already filed by the writ petitioner, which have been referred to supra and pass fresh revised Assessment Orders within a time frame.

14. Therefore, following order is passed:

a) Impugned orders bearing reference TIN 33232285867/2014-15 and TIN 33232285867/2015-16, both dated 14.05.2018 are set aside. It is made clear that impugned orders are set aside without expressing any view or opinion on merits and that the impugned orders are set aside solely on the ground that it has been passed on the basis that writ petitioner has not filed objections/documents though the writ petitioner has submitted objections and documents.

b) It is made clear that respondent has complied with the requirement of providing reasonable opportunity to the writ petitioner to show-cause against the impugned orders as mandated in the proviso to Section 27 (1) of TNVAT Act as in the considered view of this Court more than reasonable and adequate opportunities have been granted to the writ petitioner as, as many as three communications viz., revisional notice and reminders have been sent to the writ petitioner;

c) Respondent shall redo the revised assessment under Section 27(1) of TNVAT Act on the merits of objections already made together with enclosures already filed by the writ petitioner and in accordance with law;

d) Fresh Assessment Orders in aforesaid manner shall be passed as expeditiously as possible and in any event within four weeks from the date of receipt of a copy of this order.

e) Fresh Assessment orders passed after redoing the revised assessment shall be communicated to the writ petitioner under due acknowledgement.

These writ petitions are disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST)
Pollachi Rural Assessment Circle
Pollachi - 642 005

+2cc to Mr.S.Sivakumar, Advocate, S.R.No.68008
+1cc to the Special Government Pleader, S.R.No.68178

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VGII(CO)
CS/11/10/2019