IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.14441 to 14443 of 2018
and
W.M.P.Nos.17053, 17054 & 17055 of 2018

Sri Aishwarya Constructions
Rep. by its Managing Partner
Mr.K.Lakshmipathy ...Petitioner in all W.P.s

vs.

1. The State of Tamil Nadu
   Rep. by the Secretary to Government
   Commercial Taxes Department
   Fort St.George, Chennai.

2. The Commercial Tax Officer
   Panruti Rural Circle, Panruti.

3. K.Pari
   S/o.S.Kannan ...Respondents in all W.P.s

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the 2nd respondent dated 22.05.2018 bearing Ref.TIN No.33114501122/2009-2010, 2010-2011 and 2013-2014 respecitvely and quash the same inasmuch as it directs to reopen the assessment already done by way of a re-assessment order dated 29.05.2015.

For Petitioner in all W.P.s : Mr.D.Bharatha Chakravarthy

For Respondent in all W.P.s : Mr.M.Hariharan
Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the notices dated 22.05.2018 relevant to the assessment years 2009-2010, 2010-2011 and 2013-2014, wherein and whereby, the petitioner was called upon to file the objections, if any, against the proposed re-assessment in respect of those assessment years.

2. These writ petitions were entertained by this Court, based on the contentions raised by the petitioner that the impugned notices were issued by invoking the provision under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, which does not empower the Assessing Officer to reopen the assessment and on the other hand, it is for rectification of the mistake.

3. Now, a counter affidavit is filed by contending that it is by mistake Section 84 of the TNVAT Act, 2006, is quoted in the impugned notices and on the other hand, the assessment is sought to be reopened by invoking Section 27 (1) of the TNVAT Act, 2006.

4. Mr.D.Bharatha Chakravarthy, learned counsel for the petitioner raised very many grounds touching upon the merits of the contention raised in the notices and submitted that the said notices cannot be sustained based on those factual submissions.

5. This Court, at this stage is not inclined to entertain and appreciate the above contentions raised by the petitioner only on the reason that what is put to challenge is only the notices of proposal and therefore, all these contentions can be raised by the petitioner before the Assessing Officer by filing a suitable reply. No doubt, in the the impugned proceedings it was referred to Section 84 of TNVAT Act, for reopening and it is needless to say that wrong quoting of provision of law by itself, cannot be the reason to nullify the proceedings, if the same is otherwise issued by the competent authority and the contents of the proceedings is also very clear as what is proposed. Therefore, I find that wrong quoting of the provision under which impugned notices were issued cannot be a ground to set aside the same. Since the petitioner is having an effective opportunity to file a detailed reply opposing the proposal, it is open to them to make such objections and resist the reopening. Needless to say that it is for the Assessing Officer to consider those objections and thereafter, to pass the orders on merits and in accordance with law. When such being the course of action available, I do not think that these writ petitions can still be retained for considering the merits of the notices any further.

6. Accordingly, these Writ Petitions are disposed of, without expressing any view on the merits of the claim made by both parties, only by granting liberty to the petitioner to file a suitable reply/objections to the notices impugned in these writ petitions, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the second respondent shall consider the same

and pass orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the second respondent within a period of six weeks from the date of receipt of objections. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary to Government
State of Tamil Nadu
Commercial Taxes Department
Fort St.George, Chennai.

2. The Commercial Tax Officer
Panruti Rural Circle, Panruti.

+1 cc to Spl Government Pleader (Tax)Sr.No.86955
W.P.Nos.14441 to 14443 of 2018
A.SK(06/11/2019)