IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-07-2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.18441, 18444, 18447 and 18448 of 2019
And
W.M.P.Nos.17765, 17768, 17770 and 17772 of 2019

Tvl Madras Silks India Private Limited,
Represented by its Manager (Finance & Accounts)
Thiru A.Velmurugan
68, College Road,
Tirupur-641 602. .. Petitioner in all WPs

..Vs..

The Assistant Commissioner (CT),
North Circle,
Tirupur. .. Respondent in all WPs

Writ Petitions are filed under Article 226 of the Constitution of India praying to issue Writs of Certiorari, calling for the records in respect of the proceedings TIN Nos:33342310299/ 2011-12, 33342310299/2012-13, 33342310299/2013-14 and 33342310299/2014-15,dated all dated 3.12.2015 respectively of the respondent under the Tamil Nadu Value Added Tax Act, 2006 and quash the same.

For Petitioner in all WPs : Mr.Adithya Reddy

For Respondent in all WPs : Ms.G.Dhana Madhri,
Government Advocate.

C O M M O N O R D E R

This common order will govern these four writ petitions. In other words, this common order will dispose of these four writ petitions on hand.

2. Mr.Adithya Reddy, learned counsel on behalf of writ petitioner in all four writ petitions and Ms.Dhana Madhri, learned Government Advocate on behalf of lone respondent in all four writ petitions are before this Court.

3. This Court is informed that these four writ petitions arise out of a common factual matrix and that subject matter of

these four writ petitions arise under 'The Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity. This Court is further informed that these four writ petitions pertain to four successive assessment years, namely, 2011-2012, 2012-2013, 2013-2014 and 2014-2015. Assessment years and orders being different, obviously the numerical values are also different. Otherwise these four writ petitions arise out of a common factual matrix is the common submission made in unison by learned counsel on both sides.

4. In all four writ petitions, revised assessment orders made by the sole respondent under Section 27 of TNVAT Act have been called in question. Reversal of 'Input Tax Credit' ('ITC' for brevity) and melting loss while marking new gold ornaments, silver etc., form subject matter of impugned revised assessment orders. Considering the narrow trajectory which the instant writ petitions have now taken, it may not be necessary to advert to these particulars in great detail.

5. Suffice to say that before making impugned revised assessment orders, respondent sent revisional notices to the writ petitioner, but the writ petitioner did not send any objections. This is articulated in each of the impugned assessment orders and the relevant portion in the penultimate paragraph reads as follows:

> "Accordingly a notice was issued to the dealers on 8.9.2015 inviting their objections if any against the proposals. The dealers have not filed any objections. Hence the proposals are confirmed and orders passed as below."
>
> (Underlining made by this Court to supply emphasis and highlight)

6. There is no disputation or disagreement before this Court in the hearing today that the writ petitioner, who was issued with revisional notices prior to the impugned revised assessment orders did not send any objections.

7. As the writ petitioner did not send objections in spite of being given an opportunity, it may be unfair to examine the impugned revised assessment orders on various submissions, which are now being made in the instant writ petitions as these submissions are more in the nature of reply to the revisional notice.

8. Faced with the above situation, learned counsel for writ petitioner, on instructions, submitted that writ petitioner

will avail alternate remedy of statutory appeal under Section 51 of TNVAT Act through Jurisdictional Appellate Authority, namely, Jurisdictional Deputy Commissioner. Learned counsel made a request that the time spent by the writ petitioner in pursuing the instant writ petitions may please be excluded for computing the limitation for filing such statutory appeals before the Appellate Authority.

9. In the light of the narrative thus far, following order is passed:

(a) Impugned orders are not disturbed or interfered with. However, it is made clear that impugned orders are not sustained on merits. All questions on merits, including grounds raised in the instant writ petitions are left open for being canvassed before the Appellate Authority in statutory appeals.

(b) Writ petitioner shall file statutory appeals under Section 51 of TNVAT Act. For this purpose, for computing limitation for the statutory appeals, the period spent by the writ petitioner in pursuing the instant writ petitions, namely, the period from the date of presentation of instant writ petitions in this Court being 18.6.2019 to the date on which certified copies of this order is made available to the writ petitioner shall stand excluded. To be noted, this limb of this order is made, inter-alia, by placing reliance on Section 14 of the Limitation Act.

(c) However, limitation and/or condonation if any shall be within prescribed time limits after such exclusion. Though obvious, it is also made clear that conditions pertaining to pre-deposit for statutory appeals adumbrated in Section 51 of TNVAT Act will apply.

(d) If the writ petitioner chooses to file statutory appeals, the Appellate Authority, namely, Jurisdictional Deputy Commissioner shall dispose of the statutory appeals in a manner known to law and in accordance with law as expeditiously as possible.

(e) For the purpose of clarity and specificity, it is made clear that the

Appellate Authority, being an authority which can still deal with the facts, it is open to the Appellate Authority to examine books of accounts, documents and other relevant material on facts for taking a decision in the statutory appeals on merits.

10. All these writ petitions are disposed of with the aforesaid directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Svn

To

The Assistant Commissioner (CT),
North Circle,
Tirupur.

+1 cc to Mr.Adithya Reddy, Advocate, S.R.No.63694

+1 cc to the Special Government Pleader(Taxes), S.R.No.63463

WPs 18441, 18444, 18447 and 18448 of 2019

PA(CO)
SSM(21/08/2019)