IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.19609, 19612, 19614, 19616 and 19621 of 2019
and
W.M.P.Nos.19126, 19127, 19130, 19132 and 19136of 2019

M/s.Sree Sivam & Co.,
Represented by its Partner
V.Vanitha,
No.16A, Viruppatchi Nadappu Street,
Tiruvarur. ..Petitioner in all W.Ps

-Vs-

The Commercial Tax Officer,
Tiruvarur Assessment Circle,
Tiruvarur. ..Respondent in all W.Ps

Prayer in W.P.No.19609 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in TIN 33073922151/2014-2015 dated 14.05.2019 and quash the same as illegal, arbitrary and contrary to the principles of natural justice.

Prayer in W.P.No.19612 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in TIN 33073922151/2013-2014 dated 13.05.2019 and quash the same as illegal, arbitrary and contrary to the principles of natural justice.

Prayer in W.P.No.19614 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in TIN 33073922151/2012-2013 dated 10.05.2019 and quash the same as illegal, arbitrary and contrary to the principles of natural justice.

Prayer in W.P.No.19616 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in TIN 33073922151/2011-2012 dated 08.05.2019 and quash the same as illegal, arbitrary and contrary to the principles of natural justice.

Prayer in W.P.No.19621 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in TIN 33073922151/2010-2011 dated 16.04.2019 and quash the same as illegal, arbitrary and contrary to the principles of natural justice.

For Petitioners : Mr.K.Soundara Rajan
(in all W.Ps)

For Respondent : Ms.G.Dhanamadhri
Government Advocate
(in all W.Ps)

COMMON ORDER

Mr.K.Soundara Rajan, learned counsel for writ petitioner in all the five writ petitions and Ms.G.Dhanamadhri, learned Government Advocate on behalf of the lone official respondent in all the five writ petitions are before this Court.

2. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

3. Learned counsel on both sides would submit that core issue / central theme in these five writ petitions is the same and only the Assessment Years are different. Obviously, the numerical values are also different.

4. Considering the trajectory of the hearings on 16.07.2019 and today (19.07.2019), these writ petitions now turn on a very narrow compass and therefore, it is not necessary to advert to facts in great detail.

5. Short facts shorn of elaboration, particulars / details have been captured by this Court in the earlier proceedings dated 16.07.2019, which reads as follows:

> 'Mr.K.Soundara Rajan, learned counsel for writ petitioner in all these five writ petitions is before this Court.
>
> 2.Subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for brevity.
>
> 3. Writ petitioner is a dealer under TNVAT Act.
>
> 4. There was a surprise inspection conducted by

the officers of the Enforcement Wing at the place of business of the writ petitioner on 24.05.2016 and 25.05.2016, certain defects and omissions were noticed, based on which there was a proposal by Enforcement Wing.

5.It is the specific and pointed case of learned counsel for writ petitioner that the then Assessing Officer sent a deviation proposal qua the proposal given by the Enforcement Wing. This is articulated in Paragraph 6 of the affidavits filed in support of these writ petitions, relevant portion of which reads as follows:

> '6. I submit that the respondent officer who had issued the notice, had sent a deviation proposal to the higher authorities after verifying the records submitted by the petitioner.'

6. It is also the case of the writ petitioner that, thereafter Assessing Officer concerned was transferred and the new incumbent has passed the impugned Assessment Orders without verifying whether there was a deviation proposal sent by his predecessor. To be noted, this is the core issue.

7. To complete facts, it can be said that there are two issues qua impugned Assessment Order. One issue pertains to discounts given to the writ petitioner as writ petitioner is stockist for various products. It is pointed out that such discounts cannot be included in turnover in the light of definition of 'turnover' under Section 2(41) of TNVAT Act and more particularly, Clause (ii) of Explanation I thereto, which reads as follows:

'2(41).......

Explanation I......

Explanation II.......

(i)......

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover.''

8. The other issue is that of mismatch qua purchases made by the writ petitioner and 'Input Tax Credit' ('ITC' for brevity) availed.

9. It is not in dispute that the writ petitioner was called upon to send objections vide revisional notice dated 19.10.2016. After seeking two extensions of time on 18.11.2016 and 02.12.2016, writ petitioner ultimately sent objections to the revisional notice on

16.12.2016. A perusal of the impugned orders reveal that the objections have in fact, been considered and the Assessing Officer has returned findings, but submissions are to the effect that findings are erroneous. At the moment, this Court does not express any opinion on these submissions.

10. In the aforesaid backdrop what is of relevance is whether there was a deviation proposal qua proposal of Enforcement Wing officials sent by the predecessor incumbent of the officer who passed the impugned orders. Ms.G.Dhanamadhri, learned Government Advocate who accepts notice on behalf of lone official respondent i.e., Assessing officer, seeks time to get instructions on this aspect of the matter.

For enabling the learned Revenue counsel to get instructions, list in the Motion List on Friday i.e., 19.07.2019.'

6. A perusal of the aforesaid proceedings, would reveal that the central issue as narrowed down, based on submissions made in the previous hearing (notwithstanding various grounds raised and averments made in the affidavit filed in support of the writ petitions) is whether deviation proposal qua proposal of Enforcement Wing officials was sent by the predecessor of the incumbent officer, who passed the impugned orders.

7. Learned Revenue counsel after getting instructions, submits today that the files reveal that a deviation proposal was infact sent by the predecessor of the incumbent, who passed the impugned orders.

8. Though photocopies of relevant parts of the file were placed before Court, as they are intra office communications, this Court deems it appropriate to not to advert to the same and this Court is of the considered view that it will suffice to say that there has been a deviation proposal qua proposal made by Enforcement Wing officials, which has been sent by the predecessor of the incumbent, who passed the impugned orders.

9. In this regard, paragraph 10 of previous proceedings, which has been extracted and reproduced is of significance.

10. There is no reference to the aforementioned deviation proposal in the impugned orders. Besides this, considering the peculiar facts and circumstances of instant case, this Court is of the view that it may be appropriate to direct the sole respondent to give an opportunity of personal hearing. To be noted, this view is taken owing to the peculiar facts and circumstances of this case and this Court does not express any view or opinion as to whether personal hearing is necessary in

all and every case when it is not made statutorily imperative.

11. In the light of the narrative thus far, the following common order is passed in these five writ petitions.

a) All five impugned Assessment orders being references in TIN 33073922151/2014-2015 dated 14.05.2019, TIN 33073922151/2013-2014 dated 13.05.2019, TIN 33073922151/2012-2013 dated 10.05.2019, TIN 33073922151/2011-2012 dated 08.05.2019, TIN 33073922151/2010-2011 dated 16.04.2019 shall be treated as further revisional notices. This means that the impugned orders are not set aside, but they are given the character and colour of further revisional notices for the purpose of facilitating a Denovo revisional assessment. Though obvious, it is made clear that this course is being adopted without expressing any opinion or view on merits of the matter.

b) Writ petitioners, shall pay 15% of the disputed tax [tax liability alone excluding penalty] within a fortnight from the date of receipt of this order.

c) After payment of 15% of disputed tax as amount within the aforesaid time frame, respondent shall send a communication to the writ petitioner indicating the date, time and venue for personal hearing and this shall be done within a fortnight from the date of payment of 15% disputed tax liability as above.

d) If the writ petitioner does not avail the personal hearing, impugned orders will rescind to the character and colour of revised assessment orders without reference to this Court.

e) If the writ petitioner avails of the opportunity of personal hearing, respondent shall consider all the objections in the light of the deviation proposal sent by the predecessor of the incumbent, who passed the impugned orders and redo the revised assessment Denovo and pass revised assessment orders afresh as expeditiously as possible and in any event, within twelve weeks from the date of personal hearing.

12. Redone revised assessment orders in the aforesaid manner, shall be communicated to the writ petitioner under due acknowledgment in accordance with applicable rules in this regard under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)'.

13. All these five writ petitions are disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Tiruvarur Assessment Circle,
Tiruvarur.

+1cc to Mr.K.Soundararajan, Advocate, SR.No.62444
+1cc to the Spl. Govt.Pleader, Vide Sr.No.62439

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Kak(14/09/2019)