IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.08.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.22754 & 22755 of 2019
& W.M.P.Nos.22286 & 22290 of 2019

M/s.Aishwaryaa Chemicals, Represented by its Proprietor D.Rajasekharan
.. Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer
Saligramam Assessment Circle
21, G.K.Industrial Estate
Alapakkam, Chennai - 116.
.. Respondent in both W.Ps.

Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records of the respondent in CST Nos.691515/2015-16, 691515/2017-18 dated 25.04.2019 and 20.05.2019 respectively and quash the same or pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner (In both W.Ps)	:	Mr.R.Kumar
For Respondent (In both W.Ps)	:	Mr.V.Haribabu Additional Government Pleader

COMMON ORDER

Mr.R.Kumar, learned counsel on record for writ petitioner in both these writ petitions is before this Court. Mr.V.Haribabu, learned 'Additional Government Pleader' ('AGP' for brevity), who accepts notice on behalf of the sole respondent in both these writ petitions is also 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. Subject matter of instant writ petitions pertain to

assessment under 'Central Sales Tax Act, 1956' ('CST Act' for brevity), for the assessment years 2015-16 and 2017-18.

4. There is no disputation or disagreement between the two counsel before this Court that, post 01.01.2007, the applicable statute is 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity. This court is informed that both these writ petitions arise out of a common factual matrix and only the assessment years are different. This obviously means that the numerical values are also different. Therefore, these two writ petitions are being disposed of by this common order.

5. Writ petitioner was a dealer in various chemicals.

6. Writ petitioner was served with two revised assessment orders for the aforesaid two assessment years being order dated 25.04.2019 for assessment year 2015-16 and order dated 20.05.2019 for assessment year 2017-18. These two revised assessment orders have been assailed in these two writ petitions and therefore, these two revised assessment orders shall be collectively referred to as 'impugned orders' in plural and the same shall be referred to as 'impugned order' in singular, wherever it becomes necessary.

7. Adverting to the impugned orders, learned counsel for writ petitioner submits that impugned orders make it clear that they have been made pursuant to random selection for scrutiny under Section 22(3) of TNVAT Act. It is the further submission of learned counsel for writ petitioner that writ petitioner had not received any notice prior to the impugned orders and whenever a selection is made for random scrutiny under Section 22(3) of TNVAT Act, it is necessary for the Assessing Officer to call for the accounts of the dealer, scrutinize the same and then pass appropriate orders.

8. Learned counsel for writ petitioner draws the attention of this Court to Section 22(3) of TNVAT Act and Rule 10(11) of 'Tamil Nadu Value Added Tax Rules, 2007' (hereinafter 'TNVAT Rules' for the sake of convenience and clarity). To be noted, TNVAT Rules is subordinate legislation made by the delegate in exercise of Rule making power under Section 80(1) of TNVAT Act.

9. This Court deems it appropriate to extract Section 22(3) of TNVAT Act and Rule 10(11) of TNVAT Rules. The same read as follows:

> '22. Procedure to be followed by Assessing Authority:

(1)....
(2) ....
(3) Notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made wherever necessary.
.....

Rule 10. Input Tax Credit:
(1)......
(2)....
(3)....
(4).....
(5)....
(6)...
(7).....
(8).....
(9).....
(10)....
(11) The method of selection by the Commissioner referred to in sub-section (3) of Section 22 shall be based on suitable stratified random sampling method and such selection shall not exceed twenty per cent of the cases assessed under sub-section (2) of Section 22 and intimate the details of such selection to the assessing authority for detailed scrutiny of accounts. Such list shall be exhibited on the Notice Board of the assessment circles and also in the website of the department. The assessing authority shall call for the accounts of those assessees for detailed scrutiny and pass appropriate orders.'

10. Adverting to the affidavits filed in support of instant writ petitions, more particularly paragraph 2(ii), it was submitted that no notice was issued to the writ petitioner prior to the impugned orders.

11. Learned Revenue Counsel, adverting to the affidavits filed in support of instant writ petitions, pointed out that writ petitioners have attempted to say that impugned orders are revised assessments made under Section 22(4) of TNVAT Act but this is incorrect as Section 22(3) of TNVAT Act, which provides for 20% of cases being selected/picked up for scrutiny itself provides for revision of assessment. There is no difficulty in accepting the submission that Section 22(3) of TNVAT Act itself

provides for revision of assessment, but the revision of assessment has to necessarily be done in accordance with Rule 10 (11) of TNVAT Rules. Rule 10(11) of TNVAT Rules makes it clear that assessing authority should call for accounts for detailed scrutiny and pass orders. Therefore even if the impugned orders are not under Section 22(4) of TNVAT Act as contended, assuming it is under Section 22(3) of TNVAT Act by virtue of the mandate under Rule 10(11) of TNVAT Rules, it becomes necessary for the Assessing Officer to call for the accounts of the assessee.

12. The impugned orders are completely silent on this aspect of the matter. Impugned orders do not talk about any notice to the writ petitioner prior to the impugned orders.

13. Therefore, while there can be no disputation that Section 22(3) of TNVAT Act itself provides for revision of assessment as the same has to be preceded by the procedure of calling for accounts of the assessee and as the impugned orders as placed before this Court do not mention any where that it was preceded by a notice much less a notice calling for the accounts, this Court deems it appropriate to send the matter back to the respondent with a direction to call for the accounts from the writ petitioner for detailed scrutiny and redo the revised assessment in accordance with the mandate in Rule 10(11) of TNVAT Rules.

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

a) impugned orders being order dated 25.04.2019 bearing Reference No.CST 691515/2015-16 and order dated 20.05.2019 bearing Reference No.CST 691515/2017-18 are set aside. To be noted, impugned orders are not set aside on merits or in other words impugned orders are set aside without expressing any opinion or view on merits. It is made clear that impugned orders are set aside solely on the ground that there is no mention in the impugned orders that accounts of the assessee (writ petitioner) were called for detailed scrutiny prior to revision of assessment.

b) Respondent is directed to call for the accounts of the writ petitioner assessee for detailed scrutiny and pass revised assessment order as expeditiously as possible and in any event within four weeks from the date of receipt of a copy of this order.

c) Revised assessment orders passed in the aforesaid manner, shall be communicated to writ petitioner under due acknowledgement within 7 working days from the date of the order.

15. Writ petitions are disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Commercial Tax Officer,
Saligramam Assessment Circle,
21, G.K.Industrial Estate,
Alapakkam, Chennai - 116.

+1cc to Mr.R.Kumar, Advocate, S.R.No.66196
+1cc to the Special Government Pleader, S.R.No.66681

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KK(CO)
CS/18/09/2019