IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.23015, 23025, 23028, 23032 & 23034 of 2019
and W.M.P.Nos.22692, 22694, 22702, 22705,
22707, 22708, 22714, 22715,
22719 & 22720 of 2019

M/s.CBC Fashions (Asia) Private Limited
Rep. by its Managing Director
T.R.Vijayakumar .. Petitioner in all W.Ps.

Vs.

The Assistant Commissioner [ST]
Bazaar Circle, Tirupur
Tirupur District. .. Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings made in TIN.33492425404/2008-09, TIN.33492425404/2010-11, TIN.33492425404/2012-13, TIN.33492425404/2014-15 and TIN.33492425404/2016-17 dated 17.06.2019 quash the same as illegal and contrary to the scheme of the Act and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.V.Haribabu
(In all W.Ps) Additional Government Pleader

COMMON ORDER

This is a common order in these five writ petitions.

2. Mr.S.Rajasekar, learned counsel on record for writ petitioner in all the five writ petitions and Mr.V.Haribabu, learned Additional Government Pleader, who accepts notice on behalf of the lone respondent in all the five writ petitions are before this Court.

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

4. This Court is informed without any disputation or disagreement that all the five writ petitions arise out of a common factual matrix. This Court is also further informed that the subject matter of all the five writ petitions arise under '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. Five writ petitions pertain to five different Assessment Years and they are 2008-09, 2010-11, 2012-13, 2014-15 and 2016-17. Therefore, these five writ petitions which arise out of a common factual matrix are such that only the Assessment Years are different. Obviously, the numerical values are also different.

5. 'Five different revised Assessment Orders bearing Reference Nos. TIN.33492425404/2008-09, TIN.33492425404/2010-11, TIN.33492425404/2012-13, TIN.33492425404/2014-15 and TIN.33492425404/2016-17, all dated 17.06.2019' (hereinafter 'impugned orders' collectively in 'plural' and 'impugned order' in 'singular' both for brevity) have been called in question in the instant writ petitions.

6. Short facts shorn of elaboration are that writ petitioner is a dealer in Hosiery garments under TNVAT Act, that writ petitioner being a dealer under TNVAT Act is filing monthly returns under Section 21 of TNVAT Act and that there is deemed assessment under Section 22(2) of TNVAT Act. Under such circumstances, monthly returns were taken up for scrutiny and the respondent noticed what according to the respondent are defects. On this basis, respondent issued five different revisional notices to the writ petitioner dealer, all dated 07.06.2009, setting out what according to the respondent are defects in the returns and calling for objections from the writ petitioner. In other words, vide these five revisional notices, writ petitioner was given reasonable opportunity to show cause against proposed revised assessments.

7. Writ petitioner sent five different detailed replies all dated 13.06.2019.

8. Post revisional notices and objections, the impugned orders came to be passed.

9. Notwithstanding several averments made in the affidavits filed in support of the writ petitions and notwithstanding several grounds raised/contentions canvassed in the affidavits filed in support of instant writ petitions, learned counsel for writ petitioner, at the hearing, confined his submissions to one pivotal point and that one pivotal point is that the detailed and elaborate objections of the writ petitioner i.e., objections to the revisional notices running to 11 pages and 21 paragraphs has been simply shot down in one sentence containing seven words. That one sentence is 'The dealer's reply has not been accepted'. Other than this, there is no mention about the objections. It is submitted that the respondent, in the impugned orders has not mentioned as to why and how the objections of the writ petitioner are not acceptable. It was emphasised that the impugned orders do not even advert to the objections.

10. Learned Revenue Counsel, who has accepted notice on behalf of the sole respondent submits that the objections of the writ petitioner in response to the revisional notices running to 11 pages and 21 paragraphs are merely verbose and they cannot be considered as elaborate. Learned counsel for Revenue submits that the objections have referred to several judgments and several aspects of fiscal laws, all of which may not be relevant to meet the revisional notice.

11. Considering the nature of the order, which this Court proposes to pass, this Court refrains from expressing any opinion or view on this submission in this order. If the writ petitioner were to file a statutory appeal under Section 51 of TNVAT Act against the impugned orders, sub-section (2) of Section 51 of TNVAT Act makes it clear that the appeal has to be in prescribed form. There is no disputation that the prescribed form referred to in section (2) of Section 51 of TNVAT Act is Form X and the same reads as follows:

I/We .... the appellant (s) named in the above appeal do declare that what is stated therein is true to the best of my / our knowledge and belief.

Verified to-day the .... day of 200

Appellant(s) (Authorised Representative)

Note:

(1) The appeal should be in duplicate and should be accompanied by two copies (one of which should be the original or a certified copy) of the order appealed against, unless the omission to produce the original or a certified copy thereof is explained to the satisfaction of the appellate authority.

(2) The appeal should be accompanied by satisfactory proof of payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable as the case may be and 25% of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant.

(3) The appeal should be written either in English or in Tamil and should set forth concisely and under distinct heads the ground of appeal without any argument or narrative and such grounds should be numbered consecutively.

(4) The appeal should be accompanied by a Treasury receipt in support of having paid the fee prescribed. The fee shall be credited in a Government Treasury in the appropriate head of account.

[illegible]	[illegible]	
7	[illegible]	
8	Relief claimed in appeal	

Sl.No.	Nature of dispute	Turnover involved (Rs.)	Rate of tax (%)	Tax amount (Rs.)	Input tax credit (Rs.)	Penalty (Rs.)
(i)	turnover disputed					
(ii)	rate of tax disputed					
(iii)	input tax credit disputed					
(iv)	[illegible]					
(v)	penalty disputed					
(vi)	[illegible]					

9 Grounds of appeal

Appellant(s) Authorised Representative

Verification

12. A perusal of the prescribed form reveals that an appellant has to set out the grounds of appeal. It is submitted that the only ground of appeal that can be pointed out is that the respondent has not given reasons as to why, the objections/reply of the writ petitioner dealer has not been accepted. It is pointed out that grounds can be raised only if the respondent articulates in the order reasons for not accepting the reply/objections of the writ petitioner. It follows as a natural sequitur that if this is the only ground raised before the appellate authority, the appellate authority will also be left with the inevitable option/Hobson's choice of remitting the matter back to the respondent with a direction to redo the revised assessment adverting to the writ petitioner's objections and setting out the reasons as to how and why the

reply/objections of the writ petitioner are not accepted. This would only delay the entire process qua revised assessment.

13. On the contrary, if the respondent is directed to pass an order afresh giving reasons for not accepting the reply/objections of the writ petitioner, it would put an end to the controversy and it would also expedite the entire assessment process.

14. In the light of the discussion thus far, this Court passes the following order:

a) Five impugned orders bearing Reference Nos. TIN.33492425404/2008-09, TIN.33492425404/2010-11, TIN.33492425404/2012-13, TIN.33492425404/2014-15 and TIN.33492425404/2016-17, all dated 17.06.2019 are set aside. It is made clear that impugned orders are set aside on the sole ground that it does not advert to the objections and give reasons for not accepting the writ petitioner's reply to the revisional notice. In other words, it is made clear that this Court is not expressing any view or opinion on the merits of the matters.

b) As revisional notices have already been given and as the writ petitioner has sent detailed objections, this Court is convinced that the statutorily imperative requirement under proviso to Section 27(2) of TNVAT Act viz., the requirement of giving reasonable opportunity to the writ petitioner to show cause against the impugned orders has been complied with. Therefore, without any further reference to the writ petitioner, based on the objections already filed, respondent shall pass the revised assessment orders afresh adverting to writ petitioner's reply/objections to revisional notices and giving reasons for not accepting the reply/objections of the writ petitioner.

c) the aforesaid exercise shall be completed by the respondent as expeditiously as possible and in any evenr within eight weeks from the date of receipt of a copy of this order.

d) Order passed afresh in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgement in accordance with the applicable/operating rules under TNVAT Act in this regard.

All five writ petitions are disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

vsm
To

The Assistant Commissioner [ST]
Bazaar Circle, Tirupur
Tirupur District.

+3 Ccs to M/s.R. Hemalatha, Advocate sr 67185.
+1 CC to The Spl. Govt. Pleader(T) sr 67720.
+2 Ccs to M/s.R. Hemalatha, Advocate sr 67185.(17/10/2019)

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MP(CO)
SP(14/09/2019)