IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2019

CORAM

THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.26525, 26528, 26532 & 26535 of 2018
and
W.M.P.Nos.30865, 30869 to 30871 of 2018

M/s. Carboline (India)Pvt.Ltd.
rep. by Authorized Signatory,
Plot No.356 & 357, Developed Plots (SP)
14th Street, Industrial Estate,
Ambattur,
Chennai - 600 058. ...Petitioner in all the W.Ps.

Vs.

The Assistant Commissioner (ST)
Ambattur assessment Circle,
No.127, Yadhaval Street,
Padi,
Chennai - 600 050. ...Respondent in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the impugned order of re-assessment in TIN 33271327194/2010-2011; TIN 33271327194/2011-2012; TIN 33271327194/2013-2014 and TIN 33271327194/2014-2015 dated 31.07.2018 from the files of the respondent and quash the same.

For Petitioner : Mrs.Aparna Nandakumar
For Respondents : Mr.M.Hariharan
Additional Government Pleader(T)

COMMON ORDER

These writ petitions are filed challenging the individual orders of assessment dated 31.07.2018, relevant to the assessment years 2010-11 to 2014-15.

2. The grievance of the petitioner in respect of all these assessment years is against the imposition of penalty. Insofar

as the assessment year 2011-12 is concerned, further grievance of the petitioner is that the Assessing Officer has erroneously concluded as if the purchase was made from the registration cancelled dealer, while in fact, as on the date of the relevant purchase, the registration was in force.

3. Learned counsel for the petitioner submitted that in all these assessment orders, the major issue is the mismatch issue and therefore, the imposition of penalty without finding any willful negligence or omission on the part of the assessee is not warranted. Therefore, she contended that the Assessing Officer is not justified in imposing the penalty mechanically.

4. Learned Additional Government Pleader, on the other hand, contended that the Assessing Officer has dealt with each issue for each assessment year and passed the impugned order imposing penalty and therefore, the petitioner cannot have any grievance.

5. Perusal of the impugned orders would show that the Assessing Officer in the impugned orders of assessment has simply imposed penalty under section 27(4)(1) of the TNVAT Act, 2006, for each assessment year without there being any discussion and finding as to why such penalty is warranted in this case. Needless to say that a finding is necessary in justifying the imposition of penalty and thus, the Assessing Officer is not justified in mechanically imposing penalty without discussing and giving a finding as to why he is justified in imposing such penalty. Moreover, insofar as the assessment year 2011-12 is concerned, the petitioner disputes the factual finding rendered by the Assessing Officer in respect of the registration cancelled dealer. According to the petitioner as on the date of purchase, the registration was in force whereas, the Assessing Officer has found that the registration was cancelled at that time. This disputed question can also be reconsidered by the Assessing Officer once again, since this Court is inclined to remit the matter back to the Assessing Officer for reconsidering the question of penalty afresh in all these cases.

6. Accordingly, these Writ Petitions are allowed to the extent as indicated below.

(a) The impugned order imposing penalty for all these assessment years is set aside.

(b) The impugned order of assessment passed in respect of assessment year 2011-12 insofar as the issue with regard to reversal of ITC for the purchase made from the cancelled dealer for Rs.98,438/- is also set aside.

(c) Consequently, the matter is remitted back to the Assessing Officer to reconsider the issue of penalty for all the assessment years and also the issue of reversal of ITC on the purchase made from cancelled dealer in respect of the assessment year 2011-12 afresh and pass the order of assessment on merits and in accordance with law, after giving an opportunity of hearing to the petitioner.

(d) Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi

To

The Assistant Commissioner (ST)
Ambattur Assessment Circle,
No.127, Yadhaval Street,
Padi,
Chennai - 600 050.

+1cc to Special Government Pleader SR.NO. 96144

W.P.Nos.26525, 26528,
26532 & 26535 of 2018

rr(co)
nr 16/12/2019