BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.08.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.12620, 12621 of 2016 and 16952 of 2015 and W.M.P(MD)Nos.9532 and 9533 of 2016 and M.P(MD) No.1/15

M/s.Anantham Silks,
Represented by its Partner,
S.Shanmuganathan ... Petitioner in three writ petitions

Vs.

The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005. ... 1st Respondent in W.P(MD)Nos.16952/15 and 12620 and 12621/16

The Commercial Tax Officer,
Kumbakonam-I Assessment Officer,
Commercial Taxes Buildings,
Dr.Moorthy Road,
Kumbakonam,
Thanjavur District - 612 001.
... 2nd Respondent in W.P(MD) Nos.12620 and 12621 of 2016 and 3rd respondent in W.P(MD) No.16952/15

The Commercial Tax Officer,
(CT) (Enf) Group-II,
Commercial Taxes Buildings,
20/3, Sachithanandha Moopanar Road,
Thanjavur - 613 001
... 2nd respondent in W.P(MD)No.16952 of 2015

PRAYER in W.P(MD) Nos.12620 and 12621 of 2016: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorari calling for records pertaining to the impugned proceedings of the second respondent in TIN/33384081788/2014-15 and 2013-2014 dated 24.06.2016 and quash the same.

PRAYER IN W.P.(MD)No.16952 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of writ of mandamus directing the second respondent to consider the petitioner's representation dated 08.04.2015 and consequently to enquire the petitioner in this regard and to consider the documents filed by the petitioner and to grant petitioner an opportunity of personal hearing before initiating any assessment proceedings against them.

In all three writ petitions:

For Petitioner : Mr.B.Rooban
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

COMMON ORDER

The petitioner had earlier filed a writ petition in W.P(MD) No.16952 of 2015 seeking a mandamus directing the second respondent to consider its re-presentation dated 08.04.2015 to furnish copies of various documents sought for and grant of opportunity of personal hearing prior to initiation of assessment proceedings. Even during pendency of the writ petition the impugned orders of assessment have been passed as a result that W.P(MD) No.16952 of 2015 has been rendered infructuous and is dismissed as such.

2. In W.P(MD) Nos.12620 and 12621 of 2016, the petitioner challenges orders of assessment dated 24.06.2016 for the periods 2013-14 and 2014-15 passed in terms of the provisions of the Tamilnadu Value Added Tax Act, 2006 (in short 'Act').

3. Heard the detailed submissions of Mr.Rooban, learned counsel for the petitioner and Mrs.J.Padmavathy Devi, learned Special Government Pleader appearing for the respondents.

4.The petitioner is a dealer in Silks and ready-made garments. There was an inspection in the place of business of the petitioner on 5th, 27 and 28th January 2015. At the time of inspection, certain alleged discrepancies were noted in regard to the invoices maintained by the petitioner that, according to the inspecting authorities did not reflect the tax component of the consideration received.

5. The petitioners' explanation was to the effect that the invoices contained a consolidated Maximum Retain Price, inclusive of taxes. I do not express any opinion on the merit or otherwise of the manner of this manner of accounting in the light of the narration and my conclusion in the paragraphs to follow.

6. The admitted position is that the petitioner had received a notice dated 15.04.2016 from the respondent extending an opportunity to file objections to the pre-assessment proposals within 15 days from the date of receipt of notice as well as an opportunity of personal hearing on 28.03.2016. The petitioner has filed its submissions on 02.05.2016 but had, admittedly, not availed of the opportunity of personal hearing.

7. Thus, the order has been passed without affording opportunity of personal hearing. I also find the impugned order bereft of independent reasoning by the Assessing Officer, insofar as

he merely accepts/confirms the enforcement proposals in full. It is too well settled a position that an order of assessment has to contain independent reasoning of the Assessing Officer to sustain the addition/modifications to the returned turnover and should not be based merely on the inspection report of the enforcement officials. In this case, this requirement has not been satisfied.

8. I am thus of the view that in the overall interests of justice, the impugned orders of assessment are liable to be set aside. The petitioner will appear before the Assessing Authority on Monday i.e 19.08.2019 at 10.30 a.m. No further notice need be issued in this regard. After hearing the petitioner and considering all materials supplied by it as well as its objections to the pre-assessment proposals, an order of assessment shall be passed *de novo*, on merits and with independent reasoning by the Assessing Authority, within a period of four weeks from date of conclusion of personal hearing.

9. W.P(MD) Nos.12620 and 12621 of 2016 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2. The Commercial Tax Officer,
Kumbakonam-I Assessment Officer,
Commercial Taxes Buildings,Dr.Moorthy Road,
Kumbakonam,Thanjavur District – 612 001.

3. The Commercial Tax Officer,
(CT) (Enf) Group-II,
Commercial Taxes Buildings,20/3,
Sachithanandha Moopanar Road,
Thanjavur – 613 001

+1 CC to SPL GP (SR-80675[F] dated 08/08/2019)
+1 CC to Mr.B.ROOBAN, Advocate (SR-81022[F] dated 09/08/2019)

W.P(MD)Nos.12620, 12621 of 2016
and 16952 of 2015
and W.M.P(MD)Nos.9532 and 9533 of 2016
and M.P(MD) No.1/15
07.08.2019

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