IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.08.2020
Pronounced on	07.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.27400 & 27401 of 2012
and
M.P.Nos.1 & 1 of 2012

M/s.Filaments and Windings (India) Pvt Ltd.,
63, SIDCO Industrial Estate,
Coimbatore – 641021.
Rep. By its Managing Directorate
Mr.V.S.Ganesan ...Petitioner in both WPs

-Vs-

1. The Assistant Commissioner (CT),
   Podanur Assessment Circle,
   Coimbatore.

2. The Joint Commissioner (Enforcement) (CT),
   Coimbatore.

3. The Commissioner of Commercial Taxes,
   Chepauk, Chennai. ...Respondents in both Wps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent in TNGST.No. 1800419/2005-06 dated 30.08.2012 and TNGST.No.1800419/2006-07 dated 31.08.2012 and to quash the same.

For Petitioner : Mr.S.Ravee Kumar

For Respondents: Mr.Mohammed Shaffiq (SGP) &
Mr.A.N.R.Jaya Prathap (SGP)

C O M M O N O R D E R

The Writ Petitions are heard through Video Conferencing on 05.08.2020. By consent of both the parties, these Writ Petitions are taken up for final disposal.

2. The common issue involved in both the Writ Petitions is that the impugned proceedings/notices are made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforement Wing or from ISIC Authorities. Among other grounds, the petitioner herein had raised a ground that the Assessing Officer, who is a Quasi Judicial Authority, has not independently applied his mind while dealing with the impugned proceedings, but had adopted the averments and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

3. This ground raised by the petitioners had been upheld by this Court in various Writ Petitions holding that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which such a view has been taken are in the cases of Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another reported in 2006 (146) STC 642 (MAD) and Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri and another reported in 2015 (81) VST 560 (MAD).

4. Such a ratio laid down by this Court in all the above Writ Petitions stand good till date and in these background, the Commissioner of State Tax, Chennai had issued Circular No.3 dated 18.01.2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. The relevant portion of the Circular No.3 dated 18.01.2019 reads thus:-

> "b) If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the proposals, and reasons for the same to be recorded."

Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

5. At this juncture, the learned counsel for the petitioner would submit that the 1st respondent has proposed to disallow the concessional rate of tax allowed against Form XVII declaration

holding that they did not fall within the purview of Section 3 (3) or 3(5) of TNGST Act.

6. When the petitioner had challenged these denial of concessional rate of tax for the assessment years 2001-02 and 2002-03 in W.P.Nos.13896 & 13897 of 2007, this Court had held that, such a decision of the Assessing Officer that Section 3(5) of the Act would apply to "capital goods" alone, is baseless and incorrect. As such, the proposal to deny concessional rate of tax on this ground cannot be sustained, in view of the above decision of this Court.

7. In view of the Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, the impugned proceedings in both the Writ Petitions, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ISIC, are set aside and consequently, the matters are remanded back to the Assessing Officer. The Assessees are granted liberty to file their objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall extend due opportunity of personal hearing to the Assessees/Representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings, atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the Assessing Officer shall commence the assessment proceedings, after the expiry of the 30 days indicated above. During the course of the assessment proceedings, the Assessing Officer shall consider the findings rendered by this Court in the order dated 04.09.2019 passed in W.P.Nos.13896 & 13897 of 2007.

8. With the above observations and directions, both the Writ Petitions stand thus allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT),
   Podanur Assessment Circle,
   Coimbatore.

2. The Joint Commissioner (Enforcement) (CT),
   Coimbatore.

3. The Commissioner of Commercial Taxes,
   Chepauk, Chennai.

+1 cc to Mr.S.Raveekumar, Advocate Sr.No.26359
+1 cc to the Special Government Pleader Sr.No.26483
+1 cc to Mr.S.Raveekumar, Advocate Sr.No.26359 [23/09/2020]

PRE-DELIVERY ORDER MADE IN
W.P.Nos.27400 & 27401 of 2012
and
M.P.Nos.1 & 1 of 2012

ln (co)
rr ii (09/09/2020)