IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2535 to 2537 of 2014
and
M.P.Nos.1, 1, 1, 2 & 2 of 2014

Sri Kumaran Super Market,
Represented by its Proprietor,
Sri. R.Kumaresan,
Bye-pass Road, Harur – 636 903,
Dharmapuri District. ...Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District. ...Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN.No.33073342479/09-10, TIN.No.33073342479/11-12 and TIN.No.33073342479/10-11 dated 26.04.2013 and 10.10.2013 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan in all W.Ps.

For Respondent : Mr.G.Dhanamadhri
Government Advocate in all W.Ps.

C O M M O N   O R D E R

By this common order, all the three Writ Petitions are being disposed.

2. The petitioner had reported a taxable turnover for the following Assessment Years:-

Year	Turnover Reported Rs.
2009-10	9,98,072/-
2010-11	19,50,229/-
2011-12	45,67,724/-

3. The petitioner opted to pay the tax at the compounding rate of 0.5% in terms of Section 3(4) of the TNVAT Act, 2006 read with G.O.Ms.No.2, CT&R, dated 01.01.2007. However, on verification of the records from the computer centre of the Commissioner of Commercial Taxes, Greams Road, Chennai - 6, it was found that the petitioner had purchased the goods over the taxable turnover reported by the petitioner above, which reads as follows:-

Year	Turnover Reported Rs.
2009-10	50,61,753/-
2010-11	31,00,103/-
2011-12	59,78,169/-

4. Under these circumstances, the petitioner was issued with three separate notices dated 27.03.2013 for the respective Assessment Years. Before the petitioner could filed replies to the respective notices dated 27.03.2013, the impugned orders dated 26.04.2013 came to be passed. The petitioner appears to have sent a representation dated 14.06.2013 and requested for withdrawing the impugned orders dated 26.04.2013 and to issue fresh order after furnishing the copy of the analysis report and followed by the reminder letter dated 19.08.2013 was sent to the respondent. The petitioner was thereafter issued with impugned notice dated 10.10.2013, which was called upon the petitioner to pay arrears of tax for the respective Assessment Years.

5. Challenging the impugned orders and consequential impugned notice, the present Writ Petitions filed by the petitioner.

6. It is the contention of the learned counsel for the petitioner that once the petitioner opts for compounding rate under Section 3(4) of the TNVAT Act, 2006, no tax can be demanded from the petitioner by reopening the assessment in terms of the decision of this Court in Sinetech Vs. Commercial Tax Officer, Korattur, Assessment Circle, Chennai, 2008 SCC OnLine Mad 1292.

7. Defending the impugned orders and impugned notice, the learned Government Advocate submits that the petitioner has not participated in the proceedings in response to the impugned notices dated 27.03.2013 and therefore, the present Writ Petitions are liable to be dismissed. He further submits that the petitioner has an alternate remedy before the Appellate Authority and therefore, the present Writ Petitions are also liable to be dismissed. He further submits that the decision of this Court in Sinetech's case referred supra, is not applicable to the facts of the present cases.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

9. It is noticed that the impugned notices were issued only on 27.03.2013 and thereafter, impugned orders have been passed on 26.04.2013. Though the respondent submits that required records were furnished based on which the impugned orders have been passed, it is evident that the respondent has proceeded to pass the impugned orders in hurry without furnishing copies of the documents relied upon by the respondent.

10. Though the respondent has made out the cases stating that the decision of this Court in Sinetech's case referred supra is not applicable to the facts of the present cases, I am of the view, to meet the ends of justice, the impugned orders dated 26.04.2013 and the consequential impugned notice dated 10.10.2013 can be set aside and the cases be remitted back to the respondent.

11. If necessary, the respondent may issue a corrigendum notice for the period in dispute by incorporating the content of the impugned order as their proposal along with any other proposals within a period of thirty days from the date of receipt of a copy of this order. The respondent may also furnish the available records to the petitioner along with aforesaid corrigendum notices, if corrigendum is issued. Even if no corrigendum is issued, the respondent shall furnish the documents for re-opening the assessments within such period.

12. The petitioner is directed to file reply to the impugned notices 27.03.2013 and/or corrigendum if any, within a period of sixty days from the date of receipt of a copy of this order. If petitioner fails to reply, the respondent may pass appropriate orders in accordance with law.

13. The respondent is directed to pass fresh orders within a period three months from the date of receipt of a copy of this order. Needless to state before passing the fresh order, the petitioner shall be heard.

14. Accordingly, the present Writ Petitions are disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District.

+1cc to Mr.R.Senniappan, Advocate Sr.10698
+1cc to the Special Government Pleader sr.10526

W.P.Nos.2535 to 2537 of 2014
and M.P.Nos.1, 1, 1, 2 & 2 of 2014

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srg 19/03/2020