IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NOS.16432 TO 16436 OF 2014
AND
MP.NOS.2 TO 2 OF 2014

M/s.Faaber Paints Pvt Ltd.,
Rep by its Authorised Signatory,
R.Jagadish, No.210 & 211, SIDCO Industrial Estate,
Thirumazhisai, Chennai - 602 107.
... Petitioner in all WPs.

Vs.

1. The Assistant Commissioner (CT),
Sriperumbudur Assessment Circle,
Varadarajapuram - 600 123.

2. The State of Tamilnadu,
Rep by its Secretary,
Commercial Taxes & Registration Department,
Fort St.George, Chennai - 600 009.
... Respondents in all WPs.

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent in TIN.33281662081/2006-07, TIN.332816 62081/2007-08, TIN.33281662081/2008-09, TIN.33281662081/2009-10 and TIN.33281662081/2010-11 respectively and quash the impugned orders dated 15.05.2014.

For Petitioner : Mr.V.Sundareswaran, in all WPs.
For Respondent : Mr.A.N.R.Prathap, GA (T) in all WPs.

COMMON ORDER

Challenging the orders dated 15.05.2014 passed by the first respondent relating to the Assessment Years from 2006-07 to 2010-11, the petitioner has come up with these writ petitions. In the impugned assessment orders, the first respondent, after taking note of the defects pointed out by the Enforcement Wing Officials, has proposed to levy tax along with penalty.

2.The learned counsel for the petitioner submitted that the assessing officer, without properly applying his mind on the documentary evidence filed by the petitioner, simply recorded the statement made by the Enforcement Wing Officials and passed the impugned orders relating to the assessment years in question, which are liable to be quashed, in the light of the decision rendered in Amutha Metals Vs. Commerical Tax Officer, [2007] 9 VST 478 (Mad). The relevant portion of the said decision, for better appreciation, is extracted hereunder:-

> "In these two cases, it is accepted by the assessing officer that for a pre-revision notice, the petitioner has given objections. The objections have to be considered by the assessing officer on their own merits. However, the assessing officer proceeded to the effect that:
>
> > "....Their objections were examined in detail. The dealers should have placed all the facts before the inspecting officials. But they did not do so. They had given an admitted statement to the effect that the purchases were made from unregistered dealers and sold and that they were not in a position to produce purchase bills. In as much as they had admitted and even paid tax to some extent as per their statement now I find no reason to deviate from the proposals".
>
> If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this Court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside. The assessing officer is directed to consider each one of the objections raised by the petitioners and give reason, except the reason that they have admitted

before the Enforcement Officer and given statement before them with reference to the material made available and with reference to their accounts.

Hence, in both the writ petitions, the impugned orders are set aside and the matters are remitted back to the assessing authority to re-frame the assessment in accordance with the law."

Further, the Division Bench of this Court, in its judgment dated 14.12.2018 passed in W.A.(MD) Nos.558 and 559 of 2013 in the case of the Assistant Commissioner (CT), Pudukkottai - I Assessment Circle, Pudukkottai v. Emerald Stone Expert, has already dealt with the issue involved herein and held as follows:-

> "3.This Court after considering the fact that the respondent has sold the goods to a company which is located in the special Economic Zone and it is not disputed that 100% of the goods were also exported without any exemption, held that Section 18(1) of the Tamil Nadu Value Added Tax Act, 2006 gets attracted as the sale falls under Section 5(3) of the Central Sales Tax Act, 1956. The Writ Petitions were thus allowed and the impugned order of the appellant was quashed holding that reversal of income tax concession has been done on a misconception and misreading of the provisions of Section 18 of the Tamil Nadu Value Added Tax Act, 1956.
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> 4...
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> 5...
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> 6.It is the case of the appellant that the sales which are the subject-matter of the impugned orders do not attract Section 18(1)(ii) of the Tamil Nadu Value Added Tax Act, 2006.
>
> 7.The learned Additional Government Pleader appearing for the appellant produced before this Court, a Government Order in G.O.Ms.No.528, Commercial Taxes and Religious Endowments (B2) Department, Dated 21.11.1997 to the following effect:
>
> > "100% Exported Oriented Units and Units located in the Chennai Export Processing Zone (CEPZ) will be fully exempted from payment of Sales Tax."
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> 8.In view of the above-stated position, this Court is able to see that the order of the learned Single Judge is well-founded and we have no reason to interfere with the same.
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> 9.Accordingly, these writ appeals are dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed."

3.Though the first respondent filed a detailed counter affidavit justifying the impugned assessment orders, the learned Government Advocate (T) appearing for the respondents has not seriously disputed the submissions so made on the side of the petitioner.

4.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also in the light of the decisions cited on the side of the petitioner, which are squarely applicable to the present case, this Court is inclined to set aside the assessment orders passed by the first respondent.

5.Accordingly, the orders dated 15.05.2014 passed by the first respondent relating to the assessment years in question, are set aside. The matters are remitted back to the first respondent for passing orders afresh. The petitioner is directed to file necessary objections with documentary evidence, if any, to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On such filing, the first respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of three weeks thereafter.

6.All the writ petitions stand disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
   Sriperumbudur Assessment Circle,
   Varadarajapuram - 600 123.

2. The Secretary, The State of Tamilnadu,
   Commercial Taxes & Registration Department,
   Fort St.George, Chennai - 600 009.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.21725
+1cc to the Special Government Pleader, S.R.No. 21798

W.P.Nos.16432 to 16436 of 2014

RSI(CO)
CS/14/07/2020