IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.04.2021

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.15511 to 15515 of 2016
and W.M.P.Nos.13491 to 13495 of 2016

M/s.Min Bimbangal,
Rep., by its Director,
2A, 'Vinayaka',
No.34, Bakthavatsalam Salai,
Mylapore, Chennai-600 004. .. Petitioner in all W.Ps.

-vs-

The Assistant Commissioner (CT),
Alwarpet Assessment Circle,
46, Greenways Road, Chennai-600 028. .. Respondent in all W.Ps.

W.P.Nos.15511 to 15514 of 2016 :- Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in the impugned proceedings in RC No.1740/2007/A1 for the assessment years 2001-02, 2002-03, 2003-04 and 2004-05 dated 19.02.2015 respectively, quash the same as it travels beyond the scope of Section 16 of Tamil Nadu General Sales Tax Act, 1959 and beyond the powers conferred under Entry 54, List-II, Seventh Schedule and Article 246 of the Constitution of India by imposing sales tax in terms of Section 3A of the Tamil Nadu General Sales Tax Act, 1959 and direct the respondent not to proceed with the Distraint Order dated 29.03.2016.

W.P.No.15515 of 2016 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in the impugned proceedings in Distraint Order dated 29.03.2016, quash the same as it travels beyond the scope of Section 16 of Tamil Nadu General Sales Tax Act, 1959 and beyond the powers conferred under Entry 54, List-II, Seventh Schedule and Article 246 of the Constitution of India by imposing sales tax in terms of Section 3A of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.V.S.Manoj
(In all W.Ps.)

For Respondent : Mr.R.Swarnavel,
(In all W.Ps.) Government Advocate (Taxes)

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COMMON ORDER

The impugned assessment orders in proceedings dated 19.02.2015 and the Distraint Order dated 29.03.2016 are sought to be quashed in the present writ petitions.

2.The learned counsel appearing on behalf of the petitioner mainly contended that the impugned orders are cryptic and the details regarding the defense taken by the petitioner in their replies dated 15.04.2011 and 16.08.2011 are not even considered, nor any findings are given. Thus, an inference is to be drawn that the respondent has not at all considered the grounds raised by the petitioner as well as the objections.

3.The learned Government Advocate appearing on behalf of the respondent disputed the said contention by stating that in the reference column of the assessment orders dated 19.02.2015, the replies dated 15.04.2011 and 16.08.2011 were referred and therefore, the respondent has considered the said replies. He further submits that the petitioner has not registered their name under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and on receipt of the information, acts were initiated. Opportunity was provided to the petitioner to defend their case and therefore, the impugned orders are to be sustained and the writ petitions are to be dismissed.

4.This Court is of the considered opinion that the Assessing Officer is the original authority, who in turn, is competent to consider the objections, if any, by the assessee. In the present case, the assessee submitted their replies dated 15.04.2011 and 16.08.2011.

5.Perusal of the orders impugned reveal that the contentions raised in the replies are neither considered, nor any finding is made. Thus, this Court is to draw an inference that the contentions raised in the replies by the assessee are not considered and an order of assessment must contain the reasons for rejection of the reply and the grounds raised in the replies. In the absence of any such finding with reference to the grounds raised by the petitioner, it is to be construed that the authority has not considered the same.

6.In view of the fact that the impugned orders are cryptic in nature, this Court is inclined to remand the matter back to the respondent for fresh adjudication. Accordingly, the impugned orders passed by the respondent in proceedings in

RC.1740/2007/A1, dated 19.02.2015 for the assessment years 2001-02 to 2004-05 are quashed. Consequently, the Distraint Order dated 29.03.2016, is also quashed and the matter is remanded back to the respondent for fresh adjudication of the issues based on the materials available on record and by considering the reply statements filed by the petitioner and by affording opportunity to the petitioner for personal hearing, if any request is made for such personal hearing. The said exercise is directed to be done by the respondent within a period of four weeks' from the date of receipt of a copy of this order. The writ petitioner is directed to cooperate with the Assessing Officer for early disposal of the case by not requesting for unnecessary adjournments.

7.With the above observations and directions, these writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

abr
To

The Assistant Commissioner (CT),
Alwarpet Assessment Circle,
46, Greenways Road, Chennai-600 028.

+1cc to Mr.K.Vaitheeswaran, Advocate SR.No. 24522
+1 cc to Government Pleader Taxes Sr.No. 25065

W.P.Nos.15511 to 15515 of 2016

KV(CO)
A.SK(08.07.2021)