IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.Nos.4197 to 4199 of 2013
and
M.P.Nos.1, 1 & 1 of 2013

M/s.Venus Cotton Mills Private Limited,
Formerly Known as Sri Karunya Spinning Mills Private Limited,
S.F.No.241, Athikalam Pirivu, Udumalpet Road,
Dhalavaipattanam (P.O), Dharapuram,
Erode District – 638 672. ... Petitioner in all WPs.

Vs.

The Commercial Tax Officer (FAC),
Office of the Commercial Tax Officer,
Dharapuram, Erode District. ... Respondent in all WPs.

PRAYER in W.P.No.4197/2013 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari to call for the records comprised in impugned notice TNGST No.3021027/2000-2001, dated 28.05.2012 on file of the respondent, quash the same.

PRAYER in W.P.No.4198/2013 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari to call for the records comprised in impugned notice TNGST No.3021027/2001-2002, dated 28.05.2012 and consequential notice in TNGST No.3021027/2001-2002, dated 31.01.2013 on file of the respondent, quash the same.

PRAYER in W.P.No.4199/2013 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari to call for the records comprised in impugned notice TNGST No.3021027/2002-2003, dated 28.05.2012 and consequential notice in TNGST No.3021027/2002-2003, dated 31.01.2013 on file of the respondent, quash the same.

For Petitioner : Mrs.Jayalakshmi.P
for M/s.Mohammed Shaffiq

For Respondent : Mr.V.Nanmaran
Government Advocate
..in all WPs.

COMMON ORDER

The Notices issued by the respondent in proceedings dated 28.05.2012, are under challenge in these writ petitions.

2. The Notices reveal that the petitioner was finally assessed on a total and taxable turnover of Rs.8,60,59,156.00. These writ petitions are filed challenging the notices issued by the respondent. The impugned notices would reveal that on verification of certain records in the Office of the Director General of Central Excise Intelligence Chennai, and Commissioner of Central Excise, Salem, the respondent found certain discrepancies and accordingly, directed the writ petitioner to submit their objections in turnover.

3. The learned counsel for the petitioner made a submission that already an order of assessment was passed in pursuant to the revised orders passed in the year 2011. The petitioner has paid the tax and the same transactions are reflected in the impugned notices and therefore, there is no tangible material for the purpose of reopening of assessment based on the impugned notices.

4. In support of the said contention, the learned counsel for the petitioner referred an order passed by this Court in W.P.Nos.20148 to 20150 of 2011 dated 29.09.2011, holding that the respondent cannot rely on the orders passed by the Central Excise Intelligence Authorities for the purpose of reopening of assessment order passed. Relying on the observations made by this Court in the writ petition cited supra, the learned counsel for the petitioner reiterated that the impugned show-cause notices are issued based on the same transactions which were already considered by the respondent in the assessment order. The learned counsel for the petitioner made an attempt to compare the transactions considered in the assessment order and stated in the impugned notice.

5. This Court is of the considered opinion that certain intricacies in account statements turnover and other particulars, High Court cannot conduct a roving enquiry and it is for the authorities to verify the documents and evidences and form an opinion with reference to the objections raised by the petitioners. The scope of writ proceedings against a show-cause notice is limited. No writ against a show-cause notice needs to be entertained in a routine manner by the High Court. The writ against show cause notice needs to be entertained, if the show cause notice is issued by the incompetent authority having no jurisdiction or an allegation of mala fides are raised or the same is in violation of the statutory rules in force. Even in

case of raising allegation of mala fides, the authorities against whom such an allegation is raised, to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of these legal grounds, no writ proceedings can be entertained. The allegation in respect of the notices concerned, the petitioner has to avail opportunity provided and only after passing of a final order, if the assessee is aggrieved, he has to exhaust appeal remedy and thereafter approach the High Court.

6. This being the procedures contemplated, this Court is of the considered opinion that the case of the writ petitioner on merits cannot be adjudicated in a writ proceedings. The comparison of the statements and allegations cannot be undertaken by the High Court as the same involve certain intricacies and complex nature of business transactions are to be analyzed with reference to the books of accounts, documents and evidences by the Authorities Competent.

7. The learned counsel for the petitioner made a submission that the respondent has not provided an opportunity to the writ petitioner and no tangible documents are produced enabling the petitioner to defend their case. Undoubtedly, the petitioner is entitled for an opportunity and such an opportunity is to be provided before passing an order by the Authority.

8. In this view of the matter, the petitioner is at liberty to submit their objections, explanations along with the documents and evidences to the respondent within a period of two weeks from the date of receipt of a copy of this order and the respondent on receipt of any such objections or documents, fix a duty for enquiry and afford an opportunity to the writ petitioner and after completion of enquiry and by following the procedures contemplated, the respondent shall pass final orders on merits and in accordance with law as expeditiously as possible.

9. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

The Commercial Tax Officer(FAC),
Office of the Commercial Tax Officer,
Dharmapuri, Erode District.

W.P.Nos.4197 to 4199 of 2013

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srg 09/08/2021