IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10819, 10824, 10825, 10826, 10829 & 10833 of 2019
and
W.M.P.Nos.11271, 11278, 11279, 11281, 11284 & 11286 of 2019

(Through Video Conferencing)

Sri Ayyan Textile Mills (P) Ltd,
Represented by its Director,
J.Kulasekaran,
S.F.No.414, Mettupalayam Road,
Narasimmanaickenpalayam (PO),
Coimbatore - 641 031. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST),
Thudiyalur Assessment Circle,
Coimbatore. ... Respondent in all W.Ps.

Writ Petitions filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN No.33292025971/2011-2012, TIN No.33292025971/2012-2013, TIN No.33292025971/2013-2014, TIN No.33292025971/2014-2015, TIN No.33292025971/2015-2016 & TIN No.33292025971/2016-2017, dated 31.12.2018 and quash the same.

For Petitioner : Mr.Inbarajan N in all W.Ps.

For Respondent : Mr.Richardson Wilson,
Additional Government Pleader
in all W.Ps.

COMMON ORDER

In these Writ Petitions, the petitioner has challenged the impugned Assessment Orders dated 31.12.2018 for the Assessment Years 2011-12 to 2016-2017 under Central Sales Tax Act, 1956.

2. Appearing on behalf of the petitioner, the learned counsel submits that the impugned Assessment Orders are

unsustainable inasmuch as the respondent has included the exempted turnover and the interstate sales turnover for demanding the tax from the petitioner for these Assessment Years. That apart, it is submitted that the demand has been proposed in the notices and confirmed in the impugned Assessment Orders based on the date captured from the website of the Customs Department and therefore, on this score, there is a violation in the light of the decision of this Court in JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6, (2017) 99 VST 343.

3. The learned counsel for the petitioner places reliance on the following decisions and a circular:-

i. State of Tamil Nadu Vs. Golden Homes Pvt. Ltd., (2017) 102 VST 380 (Mad).
ii. Farida Leather Company Vs. Commercial Tax Officer, Periamet Assessment Circle, Chennai, (2020) 82 GSTR 452 (Mad).
iii. State of Tamil Nadu Vs. Rathna Fan House Pvt. Ltd., (2019) 60 GSTR 373 (Mad).
iv. Madras Granites (P) Ltd. Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and Another, (2006) 146 STC 642.
v. Narasus Roller Flour Mills and Another Vs. Commercial Tax Officer, (Enforcement Wing), Sankagiri and Another, (2015) 81 VST 560 (Mad).
vi. Circular No.3, dated 18.01.2019 of the Commissioner of the State Tax, Chennai.

4. The learned counsel for the petitioner further submits that there was no proposal for levying penalty in the notices issued to the petitioner for the respective Assessment Years on 22.06.2018 and therefore, the levy of penalty under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 was liable to be quashed.

5. Finally, the learned counsel for the petitioner also submits that before passing the impugned Assessment Orders, the respondent has not extended the benefit of personal hearing and therefore the impugned Assessment Orders have to be quashed and cases are liable to be remitted back as far as the Assessment Years 2012-13 to 2016-2017 are concerned.

6. He also submits that as far as the Assessment Year 2011-2012 is concerned, Section 27(1) of the Act was amended vide Section 6(1) of the Fifth Amendment Act 23 of 2012, effective from a date to be notified as 19th June, 2012 by G.O.Ms.No.82, Commercial Taxes and Registration (B1) Department, 18.06.2012. It is submitted that for the Assessment Year 2011-2012, the limitation would have expired on 31.10.2018 (six years from the date of assessment), whereas, the notice for revising Assessment under Section 27 of the Act was issued first on 22.06.2018 and thereafter and

therefore, the revision of assessment is barred under law.

7. Opposing the prayer in these Writ Petitions, the learned Additional Government Pleader appearing for the respondent submits that these Writ Petitions are liable to be dismissed on the ground that the petitioner failed to reply to the notices issued to the petitioner on 22.06.2018. It is further submitted that the time for 15 days was given to the petitioner to respond to these notices for the respective Assessment Years and the 15th day expired on 11.07.2018.

8. It is submitted that the petitioner sent a letter on 19.07.2018 and requested time for 30 days for filing reply. It is further submitted that the aforesaid request for 30 days time was made after the expiry of time for 15 days which was granted to the petitioner, but, the petitioner failed to file any reply to the notices issued on 22.06.2018 and therefore, the respondent was constrained to pass the impugned Assessment Orders.

9. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent. I have perused the impugned Assessment Orders and communications.

10. The first argument advanced as far as the limitation for re-opening of the assessment under Section 27 of the TNVAT Act, 2006 for the Assessment Year 2011-2012 is concerned, it is to be rejected on the ground that the amendment of Section 27(1) of the Act was made in the year 2012 vide G.O.Ms.No.82, Commercial Taxes and Registration (B1) Department, 18.06.2012. Therefore, there is no case for questioning the impugned order as the limitation for re-opening of the assessment is six (6) years in case of escapement of turnover as is contemplated in Section 27 of the Act. Therefore, the argument advanced on behalf of the petitioner that the demand confirmed for the Assessment Year 2011-2012 is time barred is liable to be rejected.

11. As far as the merits of the case for the Assessment Year 2011-2012 is concerned, this Court is not inclined to entertain the plea, particularly in the light of the fact that the petitioner has been negligent in not filing reply to the notices dated 22.06.2018 either within the time stipulated in the notices dated 22.06.2018 or after the expiry of time sought for by the petitioner by letter dated 19.07.2018 was granted.

12. The only fault lies in the entire proceedings is that the respondent has not called the petitioner for a personal hearing before passing impugned Assessment Orders. However, the fact remains that the petitioner was also negligent in filing the reply.

13. The arguments advanced on merits cannot be entertained in these Writ Petitions as those touch on the disputed questions of facts and therefore, this Court is incapable of deciding the case on merits merely based on the affidavit of the petitioner without any other documents. It is not possible for the Court to get into the disputed questions of fact.

14. However, considering the fact that the petitioner is facing huge demand of tax and penalty, this case is remitted back to the respondent to re-consider the issue subject to the petitioner depositing a 25% of the demand in the respective impugned Assessment Orders as a condition for the case to be heard. The amount shall be deposited by the petitioner within a period of three months from the date of receipt of a copy of this order.

15. Subject to the petitioner complying the above direction, the impugned Assessment Orders will stand quashed. In case the petitioner fails to remit the amount, it will be deemed that these Writ Petitions have been dismissed. In case the petitioner deposits the amount, the petitioner will also at liberty to file reply to the notices within a period of two (2) weeks from the date of payment of aforesaid 25% of the demand.

16. If such reply was filed by the petitioner within the time limit, the respondent shall take up the case of the petitioner and dispose the same on merits and in accordance with law within a period of three (3) months thereafter.

17. These Writ Petitions are disposed with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST),
Thudiyalur Assessment Circle,
Coimbatore.

+1 cc to Mr.N.Inbarajan, Advocate Sr.NO. 63113
+1 cc to Spl.Government Pleader Sr.NO. 63760

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PVS(CO)
A.SK(20.01.2022)