IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

W.A.Nos.2141, 2142, 2144, 2153 & 2158 of 2021
and C,M.P.Nos.13541, 13546, 13548,
13578 & 13588 of 2021

Tvl.Rajgaru Plywoods,
Represented by its Proprietor,
S.Khimchand,
No.18, A.V.Iyer Street,
Shevapet, Salem – 2. ...Appellant in all appeals

Vs

The Assistant Commissioner [ST].
Shevapet Circle,
Salem. ...Respondent in all appeals

Appeals filed under Clause 15 of Letters Patent to set aside the common order dated 22.04.2021 passed in W.P.Nos.10077, 10079, 10072, 10083 and 10089 of 2021.

Common Prayer in All WPS : Writ of Certiorari calling for the records on the files of the Respondent in TIN 33902741447/2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 dated 25.06.2020, 15.06.2020, 16.06.2020 and 17.06.2020 respectively and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Appellant
in all appeals : Mr.R.Senniappan
For Respondent
in all appeals : Mr.M.Venkateshwaran
Government Advocate

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam,J)

These writ appeals have been filed by the appellant, who is a registered dealer on the file of the respondent under the Tamil Nadu Value Added Tax Act ['the Act' for brevity], challenging the order dismissing the writ petitions by common order dated 22.04.2021, in which the petitioner challenged the correctness of the assessment orders for the assessment years 2010-2011 to 2014-2015.

2.Since orders were passed on different dates, namely, 15.06.2020, 16.06.2020, 17.06.2020 and 25.06.2020, separate writ petitions were filed.

3.The challenge to the assessment orders was on the ground that on account of the fact that the selling dealer has not paid taxes cannot be a ground to made addition in the assessee's books and demand tax from the assessee. The appellant placed reliance on the decision of the Hon'ble Division Bench in the case of Altaf Shoes (P) Ltd., vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai [(2012) 50 VST 179 (MAD)]. Reliance was also placed on the decision in the case of Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another [(2013) 60 VST 283(MAD)]. The appellant contended that pursuant to the inspection, notice was issued to the appellant stating that taxes have not been paid in respect of certain transactions effected by them. According to the appellant, these details were based upon the turnover which is reported by the selling dealer and the Assessing Officer alleged that there is a mismatch. This ultimately led to the assessment orders being passed on 08.09.2017. The appellant challenged those orders by filing W.P.Nos.30305 to 30309 of 2017. Those writ petitions were allowed by common order dated 24.11.2017 by directing the appellant to furnish the necessary records so as to enable them to file their objections.

4.The appellant's case is that the objections which were filed on 20.07.2015 itself would hold good and would cover all the submissions and requested the Assessing Officer to consider the documents produced by them and then take a decision. The Assessing Officer records that in spite of opportunity of personal hearing being granted, the dealer has not filed any objections pursuant to the notice dated 17.12.2020. However, we find in the assessment orders in the preamble portion in reference No.2 dealer's objections dated 20.07.2015 and 07.12.2016 have been set out. If according to the appellant if the objections dated 20.07.2015 would hold good, then nothing prevents the Assessing Officer from considering the objection and taking a decision in the matter. In any event, if there is an issue regarding the mismatch, the respondent should endeavour to adopt the machinery evolved by the Sales Tax Department by conducting a verification process by applying the circular issued by the Commissioner in this regard and if certain transactions can be reconciled, they can be done so and thereafter the assessee can be assessed for any escapement of turnover. Hence, we are of th view that a more pragmatic approach is required to be adopted in the matter both by the dealer as well as the Department. Considering the fact that the assessment have been lingering and yet to attain finality from the year 2015 onwards, we are inclined to grant one final opportunity to the appellant to establish that they cannot be found fault for the alleged fault committed by the selling dealer.

5.For all the above reasons, the writ appeals are allowed, order passed in the writ petitions are set aside and there will be a direction to the appellant to appear before the respondent on 14.09.2021 along with the books of accounts this will be the final opportunity to the appellant to establish his case. It is not sufficient for the appellant to merely refer to the decisions alone but he should produce the books of accounts to prove the genuineness of the stand taken by them in the objections dated 20.07.2015. We give liberty to the appellant to give one more additional objection which shall also be considered by the respondent. However, if the appellant fails to avail such an opportunity, the benefit of this order will not enure to the appellant and the writ appeals would stand automatically dismissed without further reference to this Court and the liberty granted by the learned Writ Court would stand restored. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner [ST].
Shevapet Circle, Salem.

+1cc to Special Government Pleader (Taxes)SR.No.43998

W.A.Nos.2141, 2142, 2144, 2153 & 2158 of 2021

SJ(CO)
GMY(06/09/2021)