IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

THE HONOURABLE MR.JUSTICE C.SARAVANANAN

W.P.Nos.40266 of 2016 & 40267 of 2016
and
W.M.P.No.34313 & 34314 of 2016

M/s.Sri SSAA Agri and Auto Service Centre,
Rep.by its Manager,
No.83/1, Main Road,
Lalpuram, Manalur Post,
Chidambaram Taluk. .. Petitioner in both W.Ps.

Vs

The Commercial Tax Officer,
Chidambaram-I, Assessment Circle,
Chidambaram. .. Respondent in both W.Ps.

Prayer in W.P.No.40266 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent and to quash the assessment proceedings in TIN No.33214441509/2014-15 dated 21.09.2016 without following the law laid down under Section 27(1) of TNVAT Act and direct the respondent to conduct an enquiry and grant in an opportunity of personal hearing and to pass fresh orders by furnishing the details of informations obtained from the departmental WEBSITE for the mismatch of the alleged purchases based on the various judicial pronouncements of this Court.

Prayer in W.P.No.40267 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in this proceedings in TIN 33214441509/2015-16 dated 14/10/2016 and to quash the orders passed and to direct the respondent to pass fresh orders after giving an opportunity of personal hearing as provided under Section 22(4) and Section 22 (5) of TNVAT Act and considering the letter given by the vendor on 10.11.2016 and pass fresh orders after verification of the purchases of the petitioner as per the accounts for the year 2015-16.

For Petitioner (In both W.Ps.) : M/s.C.Baktha Siromoni

For Respondent (In both W.Ps.) : Mr. M.Hariharan Addl.Govt.Pleader.

COMMON ORDER

Heard the learned counsel for the petitioner and the respondent. Since the dispute in these writ petitions lie in a short compass, these writ petitions are taken up for final hearing and disposed by this common order.

2. In these writ petitions, the petitioner has impugned assessment orders dated 21.9.2016 and 14.10.2016 passed for the Assessment Years 2014-15 and 2015-16 as contrary to Section 27 (1) and Section 22 (4) of the of the Tamil Nadu Value Added Tax Act, 2006 respectively.

3. It is submitted that before the impugned order dated 21.09.2016 for the Assessment Year 2014-15 was passed, a notice was issued to the petitioner in 13.05.2016 pursuant to which the petitioner replied and applied for extension of time for furnishing certain documents to prove that there were sales returns to the manufacturer of tractor and therefore the turnover corresponding to such sales return cannot be added to the taxable turnover. In the impugned order for the assessment year 2014-15, it is stated that though the petitioner had furnished letters on various dates, it had failed to enclose any of the documents in support of the case to substantiate it case regarding the sales returns. In the impugned order, it is stated that the stand of the petitioner was unbelievable as to how the sales return were made without their knowledge and whether the credit/debit notes were issued for such sales return. Under these circumstances, the respondent has passed the order by invoking the provisions of Section 27 (1) of the Tamil Nadu VAT Act, 2006.

4. As far as the impugned order dated 14.10.2016 for the Assessment Year 2015-16 is concerned, it is submitted that the order has been passed in violation of 22 (4) of the Tamil Nadu Value Added Tax, 2006. It is therefore submitted that there is manifest violation of the principles of natural justice as has been recognised in the above provision of the Tamil Nadu Value Added Tax Act, 2006 and therefore the said order was liable to be quashed.

5. Defending the impugned orders and resisting the grant of relief in these writ petitions to the petitioner, the learned Additional Government Pleader for the Commercial Tax Department submits that the impugned orders are well reasoned and requires no interference under Article 226 of the Constitution of India. It is further submitted that the petitioner has an alternate remedy by way of an appeal under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and therefore these writ petitions are liable to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

7. As far as the order dated 21.09.2016 impugned in W.P.No.40266 of 2016 is concerned, it is noticed that the challenge to the same is laid on the strength of Section 27 (1) (2) of the Tamil Nadu Value Added Tax Act, 2006. The provision makes it mandatory for an Assessing Officer to pass order based on his best judgement if whole or any part of the turnover of the business of a dealer had escaped assessment to tax after making such an enquiry as such officer may consider it necessary.

8. In this case, though multiple opportunity was sought for by the petitioner, it appears that the petitioner has not furnished the details. However, it was incumbent on the part of the respondent to bring it to the notice of the petitioner that the letters filed by the petitioner did not accompany any of the enclosures. Instead, the respondent has passed the impugned order stating that none of the enclosures were filed by the petitioner along with the letters and therefore it was unbelievable that the petitioner was serious about conducting the case.

9. The learned counsel for the petitioner has submitted that the petitioner has all the proof to substantiate that there were indeed sales return of the tractors and therefore prays for one opportunity been given to the petitioner to file the evidence and therefore prayed for setting aside the impugned order.

10. Considering the fact that the petitioner may be in possession of requisite evidence to substantiate sales, return, this court is inclined to quash the impugned order dated 21.09.2016 impugned in W.P.No.40266 of 2016 and remit the case back to the respondent to pass a fresh order within a period of three months from the date of receipt of a copy of this order.

11. As far as the impugned order dated 14.10.2016 passed for the assessment year 2015-16 impugned in W.P.No.40267 of 2016 is concerned, it is noticed that it has been passed in violation of principles of natural justice. Therefore, the impugned order dated 14.10.2016 passed for the assessment year 2015-16 is also quashed and the case is remitted back to the respondent to pass a fresh order within a period of three months from the date of receipt of copy of this order.

12. The petitioner may file its representation/reply if any before the respondent in the respective proceedings and obtain dated acknowledgement from the respondent within a period of one month from the date of this order. The respondent shall thereafter call upon the petitioner for a personal hearing within a period of one month from the date of this order and pass final order on merits.

13. Accordingly, these writ petitions stand allowed by way

of remand. No cost. Consequently, connected miscellaneous applications are closed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Kkd

To

1.The Commercial Tax Officer,
Chidambaram-I, Assessment Circle,
Chidambaram.

2. The Section Officer,
Writ Section,
High Court, Madras.

+2cc to Mr.Baktha Siromoni, Advocate, S.R.No. 2775
+1cc to the Government Pleader, S.R.No. 3420

W.P.Nos.40266 of 2016 & 40267 of 2016
and
W.M.P.No.34313 & 34314 of 2016

GP(CO)
GN(12/02/2021)