IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. Nos.15680, 15682, 15684, 15687, 15688 and 15693 of 2020
& WMP Nos.19524, 19525, 19527, 19530, 19528 and 19534 of 2020

M/s.Supreme Trading House
rep. By its Proprietor
Mr.A.Ibrahim Kaleel

… Petitioner in the above W.Ps

Vs

1. The Assistant Commissioner (ST)
   Central – II Assessment Circle,
   Tiruppur – 2.

2. The Commercial Tax Officer,
   (Enforcement) Group I,
   Coimbatore.

… Respondent in the above W.Ps

PRAYER : Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent passed in TIN – 33262463506/2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 and quash the impugned orders dated 18.3.2020 as passed in violation of principles of natural justice and to further direct the first respondent to pass a fresh assesssment order after considering the objections dated 21.2.2020 filed by the petitioner by granting reasonable opportunity to the petitioner.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.TNC.Kaushik
Government Advocate

C O M M O N O R D E R

Heard Mr.Rajkumar, learned counsel for the petitioner and Mr.TNC.Kaushik, learned Government Advocate for the respondents.

2. The challenge in these Writ Petitions is to six orders of assessment, all dated 18.03.2020 passed in terms of the

provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2010-11 to 2015-16. Initially, the petitioner had suffered orders of assessment dated 30.12.2016 and had challenged by way of Writ Petitions in W.P.Nos.3951 to 3956 of 2017. The said Writ Petitions were disposed by this Court vide order dated 17.02.2017 setting aside the assessments in the following terms:

> 8. Accordingly, the writ petitions are disposed of by directing the petitioner to treat the impugned orders as show cause notices and if the petitioner seeks copies of the documents or records, the first respondent shall provide copies of the same wherever it is permissible and viable. On receipt of the copies of documents, the petitioner is directed to submit their objections within a period of ten days therefrom and after receipt of the objections, the first respondent shall afford an opportunity of personal hearing and redo the assessments in accordance with law within 15 days thereafter. Till fresh orders of assessment are passed, no coercive action shall be initiated by the first respondent to recover tax as computed in the assessment orders. No costs. Consequently, the above WMPs are closed

3. The Court had, after setting in place a time frame within which the petitioner would seek and be granted the copies of the documents or records, held that the impugned orders be treated as show cause notices and the petitioner submit replies or objection to the same.

4. This order was passed on 17.02.2017. Since clarity was required on sequence of dates and events on what had transpired thereafter in order to ensure that the time frame set out by this Court was adhered to, records were sought for and the same have been produced.

5. I am given to understand that several notices have been issued by the Assessing Authority calling upon the petitioner to appear and collect the records sought for. Two such notices are dated 09.08.2017 and 27.08.2018 calling upon the petitioner to appear on 23.08.2017 and 11.09.2018 respectively to collect the records. There was no response. Finally to notice dated 16.07.2019 calling upon the petitioner to appear on 26.07.2019, the petitioner had appeared on 20.11.2019 and 03.12.2019 and received all documents. There is thus no question in my mind that the petitioner has delayed the matters substantially by not appearing before the Assessing Authority and taking the copies of documents that were being supplied and ultimately the exercise was completed only in the first week of December, 2019,

despite the order of this Court having been passed in February, 2017.

6. Pursuant thereto, the Assessing Authority has called upon the petitioner to appear in person to explain its stand in support of its returns. Several opportunities have been granted and in response to all the opportunities, the petitioner only sought time. Some adjournment letters have been placed on record, wherein the petitioner state that it was not in a position to appear on a particular day. Suffice it to say there is no bonafide attempt to appear at any stage and explain its stand. This sequence of events have thus culminated in the passing of impugned order of assessments wherein the Assessing Authority, on the basis of comparison of the physical stock taken at the time of inspection as well as various incriminating records, all of which have been supplied to the petitioner, comes to the conclusion that there was suppression.

7. Before me, the argument raised is that it is only in the impugned order that the pages of the books relied upon have been indicated and the Assessing Authority did not at any point in time furnish the details of comparison and reconciliation of the details to the petitioner. However, reconciliation of the difference in stock is an exercise that is to be undertaken by the assessee in explaining its position and in support of its returns and it is too much to expect the Assessing Authority to mark the relevant pages of the documents relied upon by him in support of the Departmental reconciliation. It is a responsibility cast upon the assessee to explain its monthly returns and substantiate the turnover reflected therein. The petitioner, time and again, is seen to have only sought an adjournment. I am, thus of the categoric view that the petitioner has not made out any legal flaw whatsoever before me, in the impugned order either on the aspect of violation of principles of natural justice or on merits, to warrant interference therein.

8. In the light of the above observations, these Writ Petitions are dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

s/d
Assistant Registrar(CS IV)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Commissioner (ST)
   Central - II Assessment Circle,
   Tiruppur - 2.

2. The Commercial Tax Officer,
   (Enforcement) Group I,
   Coimbatore.

+1cc to M/S.P.Rajkumar, Advocate, SR.No.33223
+1cc to Special Government Pleader,(Taxes) SR.No.33264

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KSM(CO)

PM(06/09/2021)