BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.03.2021
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.10785, 10786, 10787, 10788 and 10789 of 2019
and
W.M.P.(MD)Nos.8232, 8233, 8234, 8235 and 8236 of 2019

M/s.Esskay Enterprises,
Represented by its Authorised Signatory,
S.Nafeez Khader Ibrahim ... Petitioner in all W.Ps

Vs.

The State Tax Officer,
Thiruverumbur Assessment Circle,
Multi-stored Building,
Kajamalai, Trichy - 620 020. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned orders dated 28.02.2018 in proceedings TIN No.33073560244/2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 respectively, issued by the respondent and quash the same.

(in all W.Ps)

For Petitioner : Mr.G.Derrick Sam
For Mr.Hari Radhakrishnan

For Respondent : Mr.G.Arjunan,
Government Advocate.

COMMON ORDER

Heard the learned counsel on either side.

2.Though the writ petitions are five in number, the petitioner in all the writ petitions is one and the same. The assessment years alone are different. The petitioner is running a petroleum retail outlet. The Enforcement Wing Officials conducted a surprise inspection of the petitioner's premises on 30.05.2017 and 31.05.2017. They noted certain discrepancies. Based on the same, the concluded assessments were sought to be reopened. Pre-revision notices were issued to the petitioner. The petitioner gave his reply. Not satisfied with the same, the respondent went ahead and called upon the petitioner to appear for personal hearing. The respondent is said to have insisted that the petitioner should produce the original invoices. Owing to paucity of time, the petitioner could not produce the same. As a result, the impugned orders came to be passed to the prejudice of the petitioner. The same are assailed in these writ petitions.

3.The learned counsel for the petitioner states that he has now collected all the original invoices and that he will able to demonstrate to the satisfaction of the respondent. He therefore prays for an order of remand. I made it clear that an order of remand cannot be mechanical or automatic. The petitioner ought to have produced the original invoices, when the personal hearing was afforded. To the said query, the petitioner's counsel would respond by contending that it is not necessary to produce the original invoices as per Section 19 of the Tamil Nadu Value Added Tax Act but he had no answer to the Court's query as to why, I should not relegate him to avail the alternative remedy of appeal. Thereupon, the petitioner came down from his pedestal and agreed to remit 20% of the tax demanded. The petitioner is ready to remit the same within a period of two weeks from the date of receipt of a copy of this order. This undertaking is recorded.

4.The respondent could have very well given further time to the petitioner, when all that he wanted was time to collect the documents in question. This in my view amounts to denial of sufficient opportunity. In this view of the matter, the orders impugned in these writ petitions are quashed. The writ petitions are allowed. The petitioner as per his undertaking is directed to pay 20% tax demanded to the respondent. This of course is without prejudice to the petitioner's contentions. The remittance and payment will abide by the final order to be passed by the respondent following this remand. The petitioner is also at liberty to file his additional explanation. After the petitioner pays the aforesaid amount within a period of two weeks from the date of receipt of a copy of this order, the respondent will afford an opportunity of personal hearing to the petitioner and during the said personal hearing, the petitioner is at liberty to file additional objections and also produce all the original invoices. Thereafter, it is for the respondent to pass appropriate orders in accordance with law.

5.These writ petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The State Tax Officer,
Thiruverumbur Assessment Circle,
Multi-stored Building,
Kajamalai, Trichy – 620 020.

W.P(MD)Nos.10785, 10786, 10787, 10788 and 10789 of 2019
01.03.2021
(3/3)

ias
AE/ (16/03/2021) 3P / 2C