IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.27197, 27202 & 27205 of 2019
and
W.M.P.Nos.26603, 26604 & 26607 of 2019

In all W.Ps.

Tvl.Concord Polymers,
Represented by its Sole proprietor,
Mr.A.Shareef,
SF.No.233/1B-A, Mannur,
Pollachi – 642 005. ...Petitioner

Vs.

The Assistant Commissioner, (ST)
Pollachi Rural Assessment Circle,
Pollachi – 642 005. ...Respondent

Prayer in W.P.No.27197 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the Order in TIN 33302285489/2013-14 dated 14.05.2018 issued by the respondent, quash the same and direct the respondent to examine the objections filed by the petitioner and to pass order afresh on merits.

Prayer in W.P.No.27202 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the Order in TIN/33302285489/2014-15/dated 14.05.2018 issued by the respondent, quash the same and direct the respondent to examine the objections filed by the petitioner and to pass order afresh on merits.

Prayer in W.P.No.27205 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the Order in TIN 33302285489/2015-16 dated 14.05.2018 issued by the respondent, quash the same and direct the respondent to examine the objections filed by the petitioner and to pass order afresh on merits.

In all W.Ps.

For Petitioner : Mr.V.Haribabu

For Respondent : Mrs.K.Vasanthamala,
Government Advocate (T)

COMMON ORDER

The assessment orders in respect of three assessment years are under challenge.

2. The petitioner carries on trade in footwear and was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT

Act). According to the petitioner, returns were filed in accordance with the TNVAT Act. The petitioner asserts that footwear sold by him was unbranded and that the unit price was less than Rs.200/-. Consequently, the petitioner asserts that VAT was not payable thereon as per entry 30 of Part B of the Fourth Schedule to the TNVAT Act. In spite of such exemption, the petitioner states that the impugned assessment orders were issued. These writ petitions were filed in the said facts and circumstances.

3. Learned counsel for the petitioner referred to the reply dated 01.02.2018 of the petitioner and pointed out that the petitioner stated that the unit price of footwear sold by him was less than Rs.200/-. Consequently, it was stated that such sales fall within exempted sales. Learned counsel also points out that the petitioner had produced photo copies of the relevant sale bills, stock transfer invoices and other documents. By turning to the impugned assessment orders, learned counsel points that the assessing officer confirmed the demand on the ground that the petitioner / dealer had not filed objections to the revision notice. He also points out that such conclusion is contradictory because the impugned order also refers to the reply of the petitioner in the

preceding paragraph.

4. Mrs.K.Vasanthamala, learned Government Advocate, appears for the respondent. She points out that the demand was confirmed because the petitioner failed to submit documents to establish that the goods were unbranded and that the unit price thereof was less than Rs.200/-.

5. From the reply issued by the petitioner to the notice dated 22.11.2017, it is clear that the petitioner asserted that the unit price is less than Rs.200/- and that the goods are unbranded. In order to substantiate the contention, documents were enclosed. Proof of receipt of the said reply has also been produced by the petitioner. In the orders impugned herein, the reply of the petitioner on 20.11.2017 is referred to but not the reply of the petitioner in early 2018. In fact, the impugned orders refer to the request made to the petitioner to provide copies of purchase and sale bills for verification. Thereafter, the following findings were recorded:

> *"Accordingly again a Revision notice was issued to the dealers calling for their objections if any to the proposal in the reference 4th cited. The dealers after*

receiving the notice have not filed their objection till date. But in the reference 5th cited they have requested further time. But till date they have filed the necessary documents. Hence it is clear that they have no evidences to prove their contention. Hence the proposals are confirmed. "

Thus, it appears that the impugned assessment orders were issued because the assessing officer was unable to ascertain as to whether the goods were branded or unbranded and whether the unit price was below Rs.200/-. Such findings were recorded without taking into consideration the reply dated 01.02.2018. Therefore, it is just and necessary to provide an opportunity to the petitioner to place all these documents before the assessing officer for reconsideration.

6. For reasons set out above, the orders impugned herein are quashed and these assessments are remanded to the respondent for reconsideration. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh assessment orders. This process shall be concluded within a period of three months from the date of receipt of a copy of this order.

7. These writ petitions are disposed of on the above terms.There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

01.03.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To

The Assistant Commissioner, (ST)
Pollachi Rural Assessment Circle,
Pollachi – 642 005.

SENTHILKUMAR RAMAMOORTHY,J.

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