IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.Nos.30291 to 30296 of 2015
and M.P.Nos.1 of 2015

M/s. Base Automation Technologies Private Limited
Represented by its Managing Director
B.Chitra 276 Second Main Road
Nehru Nagar Chennai-96. [Petitioner in All WP's]

Vs

The Assistant Commissioner(CT)
Thiruvanmiyur Assessment Circle
Burma Colony First Main Road
Perungudi Chennai- 96.
[Respondent in All WP's

Writ petitions filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the respondent in TIN 33800924595/2009-10 to 2014-15 respectively dated 27.8.2015 and quash the same.

For Petitioner(in all WPs : Mr.R.Kumar

For Respondent(in all WPs : Mr.S.Manoharan Sundaram, AGP

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for disposal at the stage of admission itself.

2. These writ petitions have been filed by the petitioners challenging the orders of the respondent dated 27.08.2015 for the assessment years 2009-10 to 2014-15 respectively.

3.1 The petitioner is a manufacturer and dealer in Automatic Electronic Control Systems and a registered dealer on the files of the respondent herein with TIN 33800924595 and CST No.842441. The petitioner is filing their monthly returns through e filing every month during 2009-10. The petitioner claimed input tax credit for the purchases made from registered dealers in the State of Tamil Nadu and adjusted the same against the output tax due.

3.2 The petitioner's place of business was inspected by the officers of the Enforcement Wing and during inspection, the inspecting officers observed various issues and recorded a statement. Based on the inspection report of the respondent, show cause notices were issued proposing to reverse the input tax credit and also proposing to levy penalty under Section 27 (3) of the Act. The petitioner in their replies dated 23.06.2015, requested the respondent to furnish the details of turnover, name of the seller, invoice number and date so as to verify the details already furnished in Annexure I and file further objections, also pointing out the Circular issued by the Principal Secretary and Commissioner of Commercial Taxes dated 01.04.2015.

3.3. It is the contention of the petitioner that the respondent has not furnished the invoice-wise details even though specifically asked for by the petitioner. In the said replies dated 23.06.2015, though the petitioner has asked for the aforesaid details with a request to fix a date for personal hearing, the impugned proceedings dated 27.08.2015 were issued, referring the pre-provisional notices dated 7.8.2015, whereas no such notices were issued by the respondent.

Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that when the assessment was initiated under Section 27(1) of the Act, penalty is leviable under Section 27(3) of the Act. In respect of reversal of ITC, revision can be invoked under Section 27(2) of the Act and penalty is leviable under Section 27(4) of the Act. It is the contention of the learned counsel for the petitioner that the provisions of the Act has been misunderstood by the respondent and for the reversal of the input tax credit, the respondent has levied penalty under Section 27(3) of the Act, which totally vitiates the proceedings.

4.2 The learned counsel for the petitioner would further submit that the impugned proceedings are contrary to law and opposed to facts of the case. According to him, the respondent has passed the impugned proceedings without furnishing invoice wise details of the sellers, though specific request has been made by the petitioner. That apart, according to him, the respondent has not followed the instructions of the Principal Secretary and Commissioner of Commercial Taxes.

Based on these, the learned counsel for the petitioner has sought for allowing of the writ petitions.

5. The learned Additional Government Pleader (Taxes) fairly submitted that the assessing authority did not produce dealer-wise details as stipulated in the Circular issued by the Principal Commissioner of Commercial Taxes and hence these writ petitions may be disposed of by giving appropriate direction to the respondent.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. In view of the fact that the respondent/assessing authority has not furnished the invoice wise details, though specifically requested by the petitioner, this Court is of the view that suitable direction has to be issued to the respondent by setting aside the impugned orders.

8. Accordingly, by setting aside the impugned orders passed by the respondent dated 27.08.2015, the respondent is directed to produce all the details relating to all the transactions which are the basis for passing the orders of assessment within a period of two weeks from the date of receipt of a copy of this order and on receipt of those details, the petitioner is permitted to file necessary objections, within a period of two weeks thereafter and after receiving the objections, the respondent is directed to pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter. It is made clear that if the petitioner fails to file proper replies after receipt of the details furnished by the respondent, it is open to the respondent to pass appropriate orders without granting any further adjournment.

The writ petitions are disposed of on the above terms. No costs. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner(CT)
Thiruvanmiyur Assessment Circle
Burma Colony First Main Road
Perungudi Chennai- 96.

+1 cc to Mr.R.Kumar, Advocate sr.60314
+1 cc to the Special Government Pleader(Taxes)
High Court, Madras sr.60408

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