IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.8381 to 8384 of 2015
&
M.P.Nos.1 to 1 of 2015 (4 mps)

Novetek Electro Engineers Pvt. Ltd.,
Represented by its Director
Mr.Pranav Bharat Doshi
22/17 Kutchery Road
Mylapore
Chennai - 600 004 .. Petitioner
in all the petitions

Vs.

The Assistant Commissioner (CT)
Mandaveli Assessment Circle
46, Pasumpon Muthuramanalingam Road
Chennai - 600 028 .. Respondent
in all the petitions

Prayer in W.P.No.8381 of 2015 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33370803242/2010-11 dated 12.01.2015 and quash the same.

Prayer in W.P.No.8382 of 2015 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33370803242/2011-12 dated 12.01.2015 and quash the same.

Prayer in W.P.No.8383 of 2015 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33370803242/2012-13 dated 12.01.2015 and quash the same.

Prayer in W.P.No.8384 of 2015 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33370803242/2013-14 dated 12.01.2015 and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.A.N.R.Jayapratap
Additional Govt. Pleader (T)

COMMON ORDER

The petitioner has filed this writ petition to quash the proceedings of the respondent dated 12.01.2015 made in TIN No.33370803242/2010-11, TIN No.33370803242/2011-12, TIN No.33370803242/2012-13 and TIN No.33370803242/2013-14.

2. The petitioner is a private limited company engaged in the trading of IT products which are purchased locally from registered dealers. It is the case of the petitioner that he is liable to pay tax only at the rate of 4 % to 5% being the goods falling under Serial No.68 of Part B of the First Schedule to the Value Added Tax Act. It is the further case of the petitioner that the sellers are also charging and collecting the tax only at the rate of 4% to 5% treating it as sale of IT products and the respondent himself under the CST Assessment treated the products sold by him at 4 to 5% in respect of inter-state sales invoking 8(2) of the CST Act, 1956 and that being the case, without enquiry and without verifying the books of account, the respondent initiated revision proceedings proposing to levy the higher rate of tax in respect of the sale of IT products based on the report of the enforcement wing. According to the petitioner, the respondent has not verified the nature of products sold by the petitioner and they have not perused the purchase bills or sales bills before the re-classification of the product sold by the petitioner. According to the petitioner, no independent enquiry was conducted, there is total non-application of mind and even before the notice dated 01.12.2014 was served on the petitioner, a request was made for an enquiry before classification. But, without doing so, the impugned order has been served. It is the further case of the petitioner that penalty was imposed on the petitioner under Section 27(3) of the Act for which there is no jurisdiction. He further contended that the mandatory requirements of Section 22(3) r/w. Rule 10(11) has not been complied with before the revision of assessment under Section 27 of the Act and hence, the entire order has got to be set aside.

3. Per contra, the learned counsel for the respondent submitted that the proceedings initiated by the respondent is perfectly valid and the petitioner has got alternative remedy and this Court may not exercise the jurisdiction to interfere with the impugned orders.

4. From the reading of the provisions of the Act, it is clear that the order has been passed under Section 27(3) of the Act and hence, the authority has no power to impose penalty. Therefore, that part of the order imposing penalty on the petitioner is

liable to be set aside.

5. In the result, the writ petition is partly allowed and the impugned order is set aside only in respect of imposition of penalty on the petitioner. It is open to the petitioner to agitate the other issues before the appellate authority. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (CT)
Mandaveli Assessment Circle
46, Pasumpon Muthuramanalingam Road
Chennai - 600 028.

1 cc to Mr..N.Inbarajan ,Advocate, SR.No.18281
1 cc to Special Government Pleader(T),Sr.No18644

W.P.Nos.8381 to 8384 of 2015 &
M.P.No.1 of 2015

ala(co)
pmk.16.4.2015