

In the High Court of Judicature at Madras

Dated : 07.6.2016

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition Nos. 19040 to 19044 of 2016
and WMP. Nos. 16590 to 16594 of 2016

DR Enterprise Automotive Pvt. Ltd.,
rep. by its Director Hee Jin Cho Petitioner in all the WPs

Vs

The Assistant Commissioner (CT),
Thiruvallur Assessment Circle,
Thiruvallur. Respondent in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari and Mandamus to call for the impugned proceedings of the respondent passed respectively in TIN/33931722397/ 2010-11, TIN/33931722397/2011-12, TIN/33931722397/2012-13, TIN/ 33931722397/2013-14 and TIN/33931722397/2014-15 dated 18.5.2016, quash the same and further direct the respondent to redo the assessment on the above in accordance with law.

For Petitioner : Mr. N. Murali

For Respondent : Mr. Manohar Sundaram, AGP

COMMON ORDER

Mr. Manohar Sundaram, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petitions are heard together and disposed of by a common order.

2. The petitioner in these writ petitions has challenged the orders of revision of assessment for five assessment years 2010-11 to 2014-15. The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the TNVAT Act, 2006), is engaged in the manufacture of automotive components.

3. Since the impugned orders are challenged on technical grounds, it may not be necessary for this Court to go into the merits of the assessment made on the petitioner pursuant to the

impugned orders and therefore, it would suffice to refer to the proceedings pertinent to the assessment year 2010-11.

4. The place of business of the petitioner was inspected by the Enforcement Wing Officials and a VAT Audit was conducted on 4.11.2015. In the course of the said audit, the Enforcement Wing pointed out certain defects in the turnover reported by the petitioner in the monthly returns. Based on the said report, the respondent issued notices dated 28.1.2016 stating that cross verification of the purchases with reference to sellers Annexure II statement through computer website revealed mismatch transaction to the extent of claim of input tax credit and it was proposed to reverse the input tax credit. Further, based on the report of the Enforcement Wing, it was stated that the petitioner had not reported sales turnover and the sale on fixed assets of motor vehicle in their returns.

5. Apart from the above, there were other defects pointed out and the respondent proposed to reject the returns as incorrect and not complete and also to revise the assessment under Section 27 of the said Act. There was also a proposal to levy penalty under Section 27(3) of the said Act. The petitioner submitted their objections dated 12.2.2016, which were received in the office of the respondent on 25.4.2016. The petitioner explained as to how their returns filed are proper and how the proposals made to reject the returns and to revise the assessment, are erroneous.

6. Further, with regard to the proposal to levy penalty under Section 27(3) of the said Act, the petitioner referred to the decision of this Court in the case of Indra Industries Vs. State of Tamil Nadu [(2014) 69 VST 139] and stated that penalty could be levied only in the case of concealment of sales or purchase transactions and in that case, all transactions of deletion are available in the books of accounts and they have reflected in the annual financial transactions. Therefore, the petitioner requested to drop the proposal of levy of penalty under Section 27(3) of the said Act. Along with the explanation, the petitioner enclosed the details of invoices wherein mismatch was alleged. The respondent, on receipt of the objections dated 12.2.2016, proceeded to pass the impugned orders of assessment dated 18.5.2016.

7. On perusal of the same, it is seen that after setting out the proposal in the show cause notices, the respondent had referred to the reply given by the petitioner and while dealing with the reply, the respondent made an observation that the mode of movement of goods from the seller has not been substantiated and that no documents have been filed to prove the same. It has to be pointed out that this was not the reason mentioned in the show cause notices dated 28.1.2016. Prima facie, it appears that

the respondent was convinced with the explanation given by the petitioner. But, a doubt appears to have arisen in the mind of the respondent, which has led him to disbelieve the explanation on the ground that there are no records to substantiate the mode of movement of goods. If that be the case, the respondent ought to have issued a notice to the petitioner and called upon them to produce necessary documents.

8. The learned counsel for the petitioner submitted that along with the reply to the show cause notices, the petitioner had given all the details of invoices with regard to mismatch and that if the petitioner had been called upon to produce movement records, they would have produced all the records before the authority concerned. Apart from that, in the impugned orders, the respondent has not only levied penalty under Section 27(3)(b) of the said Act, but also levied penalty under Section 27(4)(ii) of the said Act. Hence, it cannot be disputed that in the show cause notices dated 28.1.2016, there was no proposal to levy penalty under Section 27(4) of the said Act. Therefore, on this ground also, the impugned orders call for interference.

9. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to fix a date for final hearing, on which date, the petitioner shall produce all relevant documents to substantiate the movement of goods for confirmation of the purchase made from the local registered dealers. On production of the documents, the respondent shall examine the same and if any other clarification is required from the petitioner, the same shall be called for and thereafter, the respondent shall pass a speaking order on merits and in accordance with law. So far as the levy of penalty is concerned, the respondent is directed to examine the matter afresh bearing in mind the legal principle settled by this Court in several decisions as to under what circumstances, penalty is levied. It is needless to point out that the respondent, being an Assessing Officer, is statutorily bound to independently make the assessment uninfluenced by any external factors and cannot be solely guided by the report of the Enforcement Wing. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

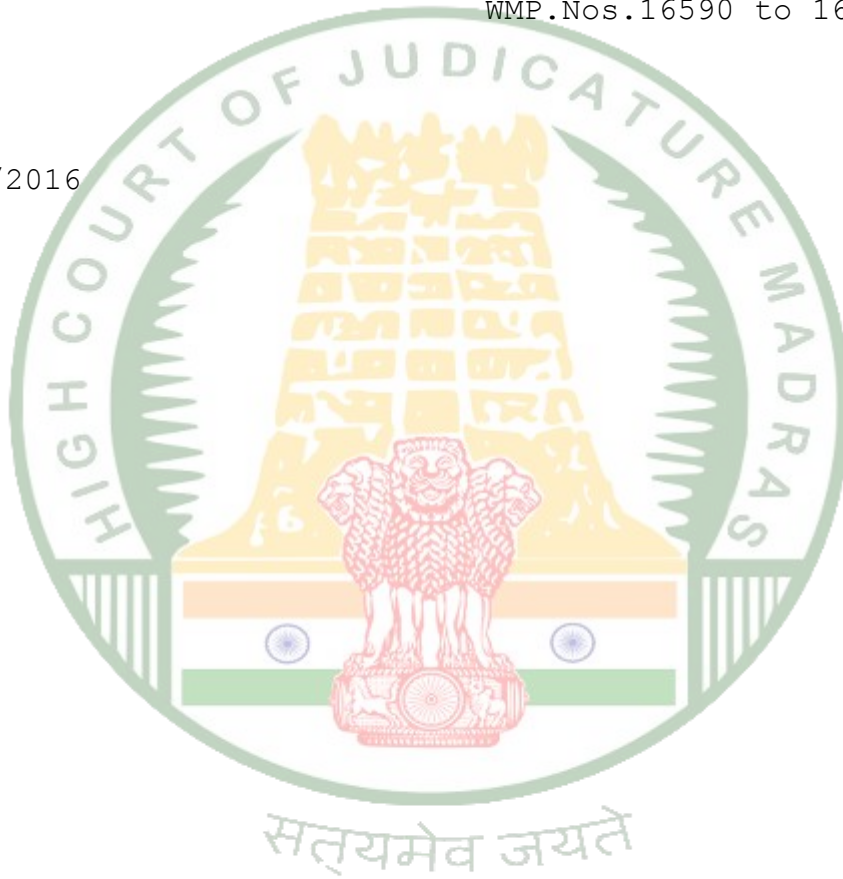
The Assistant Commissioner (CT), Thiruvallur Assessment Circle,
Thiruvallur.

+5cc to Mr.N.Murali, Advocate sr.30399

+1cc to the Special Government Pleader sr.30374

WP.Nos.19040 to 19044 of 2016&
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Ad[co]
srg 20/06/2016



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