IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2016

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.31872 to 31875 of 2015 (3 Nos.)
and
M.P.No.1 of 2015
in
W.P.Nos.31872 to 31874 of 2015

Indian Oil Corporation Limited
rep. by its Chief Finance Manager
P.Radhakrishnan,
''Indian Oil Bhavan'',
139, Mahatma Gandhi Road,
(Nungambakkam High Road)
Chennai-600 034 ... Petitioner in all W.Ps.

Vs.

The Deputy Commissioner (CT)-IV (LTU)
Large Taxpayer Unit,
Egmore, Chennai-600 008. ... Respondent in all WPs.

Writ Petition No.31872 of 2015 is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN 33270460111/2013-14 dated 27.08.2015 and quash the same.

Writ Petition No.31873 of 2015 is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN 33270460111/2014-15 dated 27.08.2015 and quash the same.

Writ Petition No.31874 of 2015 is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN 33270460111/2014-15 dated 28.09.2015 and quash the same while directing the respondent herein to rectify his order in TIN 33270460111/2014-15 dated 27.08.2015 as prayed for by the petitioner in their application dated 28.09.2015.

Writ Petition No.31875 of 2015 is filed under Article 226 of the Constitution of India to India for the issuance of a

Writ of Certiorari, calling for the records on the files of the respondent herein in TIN 33270460111/2013-14 dated 28.09.2015 and quash the same while directing the respondent herein to rectify his order in TIN 33270460111/2013-14 dated 27.08.2015 as prayed for by the petitioner in their application dated 28.09.2015.

For Petitioner in all W.Ps. : Mr.N.Prasad

For Respondent in all W.Ps. : Mr.S.Kanmani Annamalai,
Additional Government Pleader

C O M M O N   O R D E R

Heard Mr.N.Prasad, the learned Counsel appearing for the petitioner and Mr.Kanmani Annalmalai, the learned Additional Government Pleader appearing for the respondent.

2. In these Writ Petitions, the petitioner is the Indian Oil Corporation and the challenge is to the orders of demand dated 27.08.2015 as well as the order rejecting the petitioner's application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, dated 28.09.2015.

3. The petitioner was served with a pre-revision notice dated 09.06.2015 for the two assessment years, namely, 2013-14 and 2014-15 stating that on scrutiny of the returns, it revealed that they have not reversed ITC as mandated by the amendment made under Section 19(2) of the TNVAT Act in respect of the sales made under Section 8(1) of the Central Sales Tax Act, 1956. Further, it was mentioned that in terms of the amended proviso made under Section 19(2) of the TNVAT Act, the petitioner has to effect interstate sales under Section 8(1) of the Central Sales Tax Act and he is entitled to claim ITC in excess of 3% and therefore, ITC has to be reversed at 3% in respect of sales made under Section 8(1) of the Central Sales Tax Act.

4. The respondent passed the impugned assessment orders dated 27.08.2015 on the ground that the petitioner has not filed their objections. Immediately thereafter, the petitioner, on 28.09.2015 filed an application for rectification, pointing out that they have already reversed the ITC on interstate sale falling under Section 8(1) of the CST Act, 1956 and stated that these are part of the records of the assessments and requesting the Assessing Officer to take consideration of the same. That apart, the petitioner had also submitted Form-WW for the year 2013-14 along with a Covering Letter dated 31.12.2014 with the Chartered

Accountant's Report as required to be submitted under Rule 16 A of the TNVAT Act. It is seen that the Assessing Officer has received the said communication dated 31.12.2014 on 05.01.2015. Therefore, on the date, when the assessment order was passed, this Form, namely, Form WW for the year 2013-14 was very much available on the file of the respondent and could have been considered.

5. So far as the Form-WW for the Assessment Year 2014-15 is concerned, it is submitted that on account of the amendment to the rule extending the time limit for such submission, the petitioner submitted the same on 06.01.2016. Furthermore, in the Auditor's Report filed under Section 63 A of the TNVAT Act, specifically, it has been stated that the ITC has been reversed to the extent of 3% w.e.f. 11.11.2013. In these circumstances, the respondent should not have completed the assessment in the manner done by him in the impugned order and could have considered the Form-WW which was admittedly received by him on 05.01.2015 because the impugned order was passed only on 27.08.2015.

6. In the light of the above facts, this Court directs the respondent to redo the assessments for the years 2013-14 and 2014-15 in respect of the petitioner's TIN No.33270460111 after considering all the documents. Accordingly, the Writ Petition Nos.31872 and 31873 of 2015 stand allowed and the matters are remanded to the respondent for fresh consideration after affording an opportunity of hearing to the petitioner and considering the documents produced by him and redo the assessments in accordance with law.

7. So far as W.P.Nos.31874 and 31875 of 2016 are concerned, since these Writ Petitions have been filed challenging the order rejecting the applications for rectification, as the assessment orders are set aside and the matters have been remanded for redoing the assessments, necessarily, the orders rejecting the applications for rectification also have to be set aside. Accordingly, they are set aside and the W.P.Nos.31874 and 31875 of 2016 also stand allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner (CT)-IV (LTU)
Large Taxpayer Unit,
Egmore, Chennai-600 008.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.51206
+1cc to the Special Government Pleader(T), S.R.No.51181

W.P.Nos.31872 to 31875 of 2015

RP(CO)
CA(21/09/2016)