IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.25381 to 25387 of 2016
and
WMP.Nos.21683 to 21696 of 2016

M/s.Sushil Electricals
Rep. by its Proprietor, Mr.K.Suresh Kumar,
No.105/15-A, Golden Tuch Complex,
Govindappa Naicken Street,
Chennai - 600 001. ... Petitioner in all WPs

Vs.

The Assessment Commissioner (CT),
Kothawalchavadi Assmt. Circle,
No.48/39, Rajaji Salai Wavoo Mansion,
Chennai - 600 001. .. Respondent in all WPs

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33240181301/2007-2008, 2008-09, 2009-10, 2010-2011,2011-12, 2012-13 2013-14 respectively dated 31.05.2016 and quash the same as illegal and against the principle of natural justice and further direct the respondent to furnish the copy of invoice copies, Annexure I and II of the buyer and seller respectively relied on against the petitioner and complete the assessment without being influenced by the inspection report and thereafter pass the order in accordance with law.

For Petitioner : Ms.C.Rekha Kumari

For Respondents : V.Haribabu
Additional Government Pleader

ORDER

Heard Ms.C.Rekha Kumari, learned counsel for the petitioner and V.Haribabu, learned Additional Government Pleader accepts notice on behalf of the respondent. With the consent of the learned counsel on either side, these Writ Petitions itself are taken up for final disposal.

2.The petitioner is a Proprietary concern carrying on trading activities in electrical goods and registered as a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956. In these writ petitions, the petitioner has challenged the assessment orders dated 31.05.2016 for the years 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014. The place of business of the petitioner was inspected by the Enforcement Wing Officials on 21.03.2014 and a report appears to have been forwarded by the Enforcement Wing Officials to the respondent viz., Assessing Officer pointing out the following defects, viz., (i) Difference in Purchase turnover with respect to Balance Sheet and Returns; (ii) Reversal of ITC on Interstate sales without C-Forms; (iii) Liability for Non-filing of C-Form within the period; (iv) Liability for Non-filing of E1 Forms within the period; (v) Discount Received; (vi) Cross verification of Buyer & Seller Annexure; (vii) Purchase effected from Registration cancelled dealers; (viii) Disallowance of Zero Rated Sales.

3.On a cursory reading of the impugned assessment orders, one would get an impression that it is a detailed order containing reasons and passed with a due application of mind by the Assessing Officer. But on a closer scrutiny of the impugned assessment order, it is evidently clear that the order is an outcome of total non application of mind. This Court is convinced to say so because all that the respondent has done is to verbatim repeated the report of the Enforcement Wing Officials. This is clear on a mere reading of the impugned order. The non application of mind is to the extent that the taxes which have been paid by the petitioner to the Enforcement Officials though have been recorded by the Enforcement Wing Officials, the respondent has not given credit to the same. The following details will show as to what are the taxes which have been paid by the petitioner for all the assessment years and for better appreciation, the details are given in tabular form.

	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Deemed purchase value based on balance Sheet & returns	Rs.1,218	Rs.4,434	Rs.838	Rs.6,563	Rs.819	Rs.3,549	No Due

Reversal of ITC U/S. 19 (5)(c)	Rs.6,871	No Due	No Due	No Due	Rs.22,183	Rs.32,992	Rs.61,642
Difference of tax for non-production of 'C' forms	Rs.10,990	No Due	No Due	No Due	Rs.39,680	Rs.59,325	Rs.68,415
Difference of tax for non-production of E-1 forms	Rs.3,571	Rs.1,833	No Due	No Due	Rs.6,349	Rs.52,359	Rs.22,845
Difference in sales turnover between balance sheet & returns	No Due	No Due	Rs.21.966	No Due	Rs.5,521	Rs.400	No Due
Miscellaneous Income	No Due	No Due	No Due	No Due	Rs.1,333	No Due	No Due
Stock variations	No Due	No Due	No Due	No Due	No Due	No Due	Rs.1,63,558
	Rs.22,650	Rs.6,267	Rs.22,804	Rs.6,563	Rs.75,885	Rs.1,48,625	Rs.3,16,460
	TOTAL TAX PAID DURING INSPECTION = Rs.5,99,254/-						

4.On a perusal of the impugned orders, it is seen that the Assessing Officer has recorded that the liability under first four heads have been collected and tax has been paid. Yet, while computing the assessment, in page 7 of the impugned order, the turnover for the next four heads has been shown and the tax which has already been paid has been shown as 'tax due'. Therefore, the assessment order in respect of the assessment of the turnover under the four heads pointed out above stands quashed. This leaves us with the other four issues viz., Discount Received, Cross verification of Buyer and Seller Annexure, Purchase effected From Registration cancelled dealers and Disallowance of Zero Rated Sales. It appears that the petitioner though was afforded an opportunity to submit their objections, they could not do so for reasons beyond their control and the petitioner had to consult their sales tax consultants and reconcile the records which had taken some time and by then, the impugned orders have been passed.

5.In the light of the above observations made by this Court in the preceding paragraphs, this Court is of the view that the petitioner could be granted one more opportunity to submit their objections in respect of the above mentioned four heads viz., Discount Received, Cross verification of Buyer and Seller Annexure, Purchase effected From Registration cancelled dealers and Disallowance of Zero Rated Sales.

6.Accordingly, these Writ Petitions are partly allowed and the impugned orders are quashed in so far as the four heads viz., Difference in Purchase turnover with respect to Balance Sheet and returns; Reversal of ITC on interstate sales without C Forms; Liability for Non-filing of C Forms within the period; Liability for Non-filing of E1 Forms within the period and the petitioner is granted 15 days time to file their objections under the four heads viz., Discount Received, Cross verification of Buyer and Seller Annexure, Purchase effected From Registration cancelled dealers and Disallowance of Zero Rated Sales along with supportive documents and on receipt of the same, the respondent shall afford an opportunity of personal hearing to the petitioner and complete the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sgl
To

The Assessment Commissioner (CT),
Kothawalchavadi Assmt. Circle,
No.48/39, Rajaji Salai Wavoo Mansion,
Chennai - 600 001.

+1cc to M/S.C.Rekha kumari, Advocate sr.41864
+1cc to the Government Pleader sr.41507

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MP 1[co]
srg 25/07/2016