IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.36274 to 36277 of 2016 &
WMP Nos.31185 to 31188 of 2016

M/s Kwality Plasto Pack
rep. by its Partner
Thiru Peer Latheef Raja .. Petitioner in all W.Ps

-Vs-

1.The Assistant Commissioner (CT)
Kothavalchawadi Assessment Circle
Wavoo Manson, Chennai-1.

2.The State of Tamil Nadu rep. by its Secreaty
Commercial Taxes and Registration Department
Fort St.George, Chennai 9.
.. Respondents in all W.Ps.

Common Prayer : Writ petitions filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records relating to the impugned proceedings of the first respondent in TIN No.33640201257/2013-14, 2012-13, 2010-11 and 2014-15, dated 31.08.2016 and quash the same.



For Petitioner : Mr.A.K.Jayaraj
(in all W.Ps.)

For Respondents : Mr.K.Venkatesh
(in all W.Ps.) Government Advocate (T)

COMMO N ORDER

Heard Mr.A.K.Jayaraj, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who has accepted notice on behalf of the respondents. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for disposal.

2.The petitioner who is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act], has filed these Writ Petitions, challenging the orders of assessment under the VAT Audit, for the years 2013-14, 2012-13, 2010-11 and 2014-15, respectively, dated 31.08.2016.

3.A VAT Audit was conducted in the place of business of the petitioner by the Enforcement Wing Officials on 10.12.2014 and at that time, they have noticed certain defects. Based on such defects, the first respondent issued notices dated 08.01.2016, proposing to hold that the petitioner has not reported the correct turnover in their Annexure-I along with monthly returns.

4.The said stand was taken by the first respondent based upon the details culled out from the cross verification of the Annexure-I and Annexure-II of the buyer and seller in the Departmental Website and separate notices were issued for all the four years.

5.On a perusal of the notices dated 08.01.2016, it is seen that the notices for the assessment years 2010-11, 2012-13 and 2014-15, do not contain any details with regard to the mismatch. Only in respect of the notice for the assessment year 2013-14 is concerned, the names of five dealers have been mentioned.

6.Thus, the notices issued by the first respondent dated 08.01.2016, being bereft of particulars, the petitioner could not have submitted an effective objection to the notices. Further, due to sickness, the petitioner could not immediately respond to the notices, which ultimately resulted in the impugned assessment orders.

7.In several decisions, this Court has taken a view that merely because certain details are reflected in the official website of the Department and does not match with the returns submitted by the dealer, that cannot be a sole basis for reversing the Input Tax Credit or for revising the assessment. However, if there are any verifiable materials available with the Department, then the dealer should be supplied with all the details and only after the dealer receive all the details and information, he would be able to submit an effective reply.

8.In the instant case, the first respondent has not given any details in the show cause notices dated 08.01.2016 and as already observed, the notices are bereft of particulars. Consequently, even though the petitioner did not submit objections, no worthwhile objections could have been submitted by the petitioner, in the absence of any details forthcoming in the show cause notices, that too the show cause notices came to be issued in January, 2016, based on the VAT Audit, which was conducted in December, 2014.

9.Hence, for all the above reasons, the Writ Petitions are allowed, the impugned orders dated 31.08.2016, as well as the show cause notices dated 08.01.2016, are set aside. However, it is open to the first respondent to issue fresh notices, giving full particulars and thereafter proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RPA

To

1.The Assistant Commissioner (CT)
Kothavalchawadi Assessment Circle
Wavoo Manson, Chennai-1.

2.The Secretary
Commercial Taxes and Registration Department
Fort St.George, Chennai 9.

+1cc to Mr. A.K. Jayaraj, Advocate, S.R.No.59287

rv (CO)
md (8/11/2016)