IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.37355, 37524, 37555 to 37558 of 2016

& W.M.P.Nos.32006, 32153, 32181 to 32184 of 2016

Anabond Ltd.,
Rep. By its DGM - Taxation &
Corporate Affairs, Mr. M.S.Abraham,
No.36, Type II, Dr VSI Estate,
Thiruvanmiyur,
Chennai - 600 041 ... Petitioner in all W.Ps.

Versus

The Assistant Commissioner (CT),
Thiruvanmiyur Assessment Circle,
Plot No.141, I Floor, Yazhini Complex,
I Main Road, Burma Colony,
Perungudi, Chennai - 600 096 .. Respondent in all W.Ps.

Prayer:- Petitions filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorari to call for the records relating to the Assessment Orders, in TIN/33390961147/2015-16; 2014-15; 2010-11; 2011-12; 2012-13 and 2013-14, all dated 22.09.2016, passed by the respondent and to quash the same as arbitrary and illegal.

For Petitioner in all W.Ps.: Mr. Joseph Prabakar

For Respondent in all W.Ps. : Mr. K.Venkatesh,
Govt. Advocate (Taxes)

COMMON ORDER

Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes), appearing for the respondent, in all the writ petitions. By consent of the learned counsel for both sides, the writ petitions are taken up for final disposal.

2. The petitioner, in all these writ petitions, is a company incorporated under the Indian Companies Act, 1956, engaged in the manufacture of adhesives and they are registered as dealers under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. 3. In all these writ petitions, the petitioner has challenged the orders of assessment for the years 2015-16, 2014-15, 2010-11,

2011-12, 2012-13 and 2013-14, respectively. Since common issues are involved in all these writ petitions, they were heard together and are disposed of, by common order.

4. An inspection by the Enforcement Wing Officials of the Department was conducted in the business premises of the petitioner from 22.03.2016 to 14.07.2016. As a result of such inspection, the respondent / Assessing Officer of the petitioner proposed to re-open the assessments for all the assessment years mentioned above, by issuing pre-revision notices, dated 04.08.2016.

5. The notices issued are almost identical and three defects were pointed out, namely, that the petitioner has effected purchases from the registration cancelled dealers, they have not reported purchases from certain dealers during the relevant years and availed the input tax credit, whereas the selling dealers have not reported the sales turnover and not paid the tax dues and the list of mis-match was furnished to the dealers, Invoice-wise. The third issue, which arises for only one assessment year, namely, 2014-15, was with regard to the CST sales, wherein the petitioner had not filed C-Forms. Thus, the assessments sought to be re-opened was largely on the ground of mis-match between the annexures of the petitioner and the selling dealers. The other issues are only marginal.

6. On receipt of the pre-revision notices, the petitioner submitted their interim reply, dated 20.09.2016, stating that so far as the purchases effected from the registration cancelled dealers are concerned, the petitioner had voluntarily reversed the input tax credit and it was pointed out that the cheques for such reversal have been handed over to the Enforcement Wing Officials. With regard to the mis-match, as pointed out in the pre-revision notices, the petitioner stated that they have sent letters to the respective suppliers for furnishing details with regard to the alleged mis-match of the selling dealers' turnover and purchase dealers' turnover and the matter is under progress. Thus, essentially the petitioner wanted time to produce details. However, the petitioner did not specifically seek for time, but, informed the Assessing Officer that they are collecting details with regard to the alleged mis-match. These objections were received by the respondent on 29.01.2016, which is not in dispute.

7. While completing the assessment, the respondent has referred to the petitioner's objections and curiously neither waited for the petitioner to furnish the details nor afforded an opportunity of personal hearing, but proceeded to confirm the proposal in the pre-revision notices on the ground that it has to be done to safe-guard to the interest of the Revenue. That apart, the Assessing Officer appears to have been solely guided by the report given by the Enforcement Wing Officials, at the time of inspection and has made certain references to

the information recorded by the Enforcement Wing Officials. It is a settled legal position that the Assessing Officer is an independent statutory Authority, who has to consider the dealer's objections, when they respond to the pre-revision notices and cannot be solely guided by the report of the Enforcement Wing Officials and if done so, it would amount to abdication of the statutory duty cast upon the Assessing Officer. In fact, what has been done by the respondent is clearly an abdication of his statutory duties.

8. With regard to the assessment year 2014-15, while issuing pre-revision notice, dated 04.08.2016, the respondent stated that the petitioner has reported purchases from certain dealers during the said year and availed input tax credit of Rs.10,17,42,166/- and on receipt of the same, the petitioner, while submitting their objections, dated 20.09.2016, specifically stated (in their objections for 2014-15) that, by mistake, they have shown the input tax credit as Rs.10,59,93,960/-, instead of Rs.12,52,677/-, in Annexure A-I. However, in Form-I, the input tax credit has been correctly shown as Rs.12,52,677/-. Though the petitioner specifically pointed out this aspect, the respondent, while completing the assessment and passing the impugned assessment order (for 2014-15), failed to advert to the said submission and proceeded to confirm the proposal in the pre-revision notice, without disclosing the purchase turnover, which was, in fact, disclosed in the other pre-revision notices for the other assessment years, i.e., 2010-11 to 2013-14 and 2015-16. This is also one more inherent defect in the impugned proceedings, in particular, to the assessment year 2014-15.

9. Thus, this Court is of the view that the entire revision of assessment has to be re-done, after affording reasonable opportunity to the petitioner to produce the necessary records, as they have addressed their suppliers and they are in the process of gathering details.

10. For all the above reasons, the writ petitions are allowed, the impugned orders are set-aside and the matters are remitted back to the respondent, for fresh consideration, who shall grant 15 days time to the petitioner to submit their fresh objections along with the necessary records, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessments in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

srk

To

1. The Assistant Commissioner (CT),
   Thiruvanmiyur Assessment Circle,
   Plot No.141, I Floor, Yazhini Complex,
   I Main Road, Burma Colony,
   Perungudi, Chennai - 600 096

1 cc to Mr.Joseph Prabakar, Advocate, Sr. 61447
3 cc to Spl.Government Pleader, Sr. 61544, 61545, 61548

W.P.Nos.37355, 37524, 37555 to 37558 of 2016
& W.M.P.Nos.32006, 32153, 32181 to 32184 of 2016

AK (CO)
kk 18/11