IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.39005 to 39007/2016 & WMP.Nos.33438 to 33451/2016

M/s.Raj Yamaha
rep.by its Proprietor Mr.Rajkumar
Harichand, No.2/325, Thoraipakkam
Chennai-97. .. Petitioner in all the writ petitions

Vs

1.The Assistant Commissioner
[CT], Sholinganallur Assessment
Circle, Plot No.141, 1st Main Road
Burma Colony, Perungudi
Chennai 600 096.

2.The Deputy Commissioner [CT]
Enforcement [East]. PAPJM
Buildings, Greams Road,
Chennai 600006. .. Respondents in all the writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in TIN/33110926381/2013-14 ; TIN/33110926381/2014-15 ; TIN/33110926381/2015-16 dated 30.09.2016, quash the impugned proceedings and further direct the 1st respondent to restore the Input Tax Credit reversed by him following the report of the 2nd respondent in Sl.No.120/2015-16/Gr.II/Enf.[East] dated 05.08.2016.

For Petitioner in
all the writ petitions : Mr.V.Sundareswaran
For Respondents in
all the writ petitions : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Special Government Pleader appearing on behalf of the respondents and with the consent on either side, the writ petitions are taken up for final disposal.

2 The petitioner, in these writ petitions is the registered dealer on the file of the 2nd respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act]. In these writ petitions, the petitioner has challenged the orders of Assessment under the TNVAT Act for the years 2013-14 ; 2014-15 and 2015-16.

3 The only ground on which the impugned orders have been challenged is by contending that the petitioner's objections give to the pre-revision notice dated 30.08.2016 was not taken into consideration by the Assessing Officer and it has been stated in the impugned orders, as if the petitioner has not filed any objections. The record of the proceedings would show that the first objection was given by the petitioner on 21.09.2015 which is shown to have been sent by Registered Post on the same date. The second objection is dated 27.09.2016, sent by the Registered Post on the same date itself. Thus, under normal circumstances since the office of the respondents is also in Chennai, it should have reached the respondents within two days or at least on the date when the Orders of Assessment was passed, i.e, on 30.08.2016. The proposal to reverse the Input Tax Credit availed by the petitioner is on the ground of mismatch of transactions compared with the return by the other end dealers. On a perusal of the pre-revision notice dated 30.08.2016, it is seen that except for the details relating to the turnover and VAT paid, no other details have been furnished by the 1st respondent, so as to enable the petitioner to file an effective objection, Thus, for the above reasons, this Court is of the view that the Assessment should re-done for which purpose, this Court is inclined to remit the matter for fresh consideration.

4 In the light of the above, the writ petitions are allowed and the impugned orders dated 30.09.2016 made in TIN/33110926381/2013-14 ; TIN/33110926381/2014-15 ; TIN/33110926381/2015-16 are hereby set aside and the 1st respondent is directed to issue a fresh notice giving the entire details of the alleged mismatch of transactions in a tabulated form, mentioning the Invoice numbers, TIN numbers of the other end dealers etc., and give the petitioner fifteen days time to submit his objections and on receipt of the objections, the 1st respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner
[CT], Sholinganallur Assessment
Circle, Plot No.141, 1st Main Road
Burma Colony, Perungudi, Chennai 600 096.

2.The Deputy Commissioner [CT]
Enforcement [East]. PAPJM
Buildings, Greams Road, Chennai 600006.

+1 cc to M/s.V.Sundareswaran,advcoate,sr.64320

cnr(co)
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