IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.12919 to 12925
and
W.M.P.Nos.13784 to 13790 of 2017

M/s. Intek Engineers,
rep. by its Partner ...Petitioner in all W.Ps.
8,SIDCO Industrial Estate,
Ambattur.

Vs.

The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle,
Chennai - 600 050. ...Respondents in all W.Ps.

Prayer in all W.Ps.:- Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent, in his proceedings, in TIN /33441440251/2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, and to quash the assessment order, dated 07.04.2017.

In all W.Ps.

For Petitioner : Mr.P.V.Sudakar
For Respondent : M/s.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Heard Mr.P.V.Sudakar, learned counsel appearing for the petitioner and M/s.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions on the Tamil Nadu Value Added Tax, 2006 (TNVAT Act), is aggrieved by the orders of the assessment passed by the respondent for the assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

3. Since all the impugned assessment orders arises out of a revision of the assessment, pursuant to the audit conduced by the Enforcement Wing Officers of the respondent/Department, dated 19.07.2016, all the Writ Petitions are taken up together, and disposed of by this common order. It may not be necessary for this Court to labour much to determine as to whether the impugned orders of assessment have been validly passed, since, on a apparent reading of the impugned orders, it is evidently clear that the respondent/Assessing Officer has gone beyond the scope of the proposal made in the Revision Notices, dated 14.11.2016. By way of illustration, if the Revision Notice for the assessment year 2009-10 is taken for consideration, the respondent/Assessing Officer pointed out two issues, viz., i) Liability on fixed assets/deletion, and ii) Cross verification of Buyer and Seller as per Annexure-I for the year 2009-10. The petitioner, submitted their objections, and furnished their details. However, respondent/Assessing Office, while completing the assessment proceedings, and passing the impugned orders, dated 07.04.2017, has proceeded entirely on a different grounds, and in fact, added two more grounds, viz., a) Difference between the purchase turnover, reported in the Monthly Returns and the turnover, as per the Books of Accounts, and b) Difference between sales turnover reported in the Monthly Returns and the turnover, as per the Books of Accounts.

4. Further, on a reading of the impugned assessment orders, while dealing with the difference between the purchase turnover, reported in the Monthly Returns and the turnover, as per the Books of Accounts, similarly, while dealing with sales turnover, the respondent has accepted the contention of the dealer with regard to the purchase value relating to the previous year has been adopted instead of the figure relating to that particular year. But the statement furnished by them as the figures relating to the purchases varies widely with the purchase turnovers already reported by them to the Department in the monthly returns. Having admitted the mistake, the respondent could not have proceeded further, without making proper proposal, he proposed to proceed with the assessment on totally different lines. This mistake committed by the respondent goes to the root of the mater, affecting the very orders of assessment. This is sufficient to hold that the impugned orders are bad in law, as they have exceeded the proposal in the Revision Notices, dated 14.11.2016, and without due application of mind.

5. In the light of the above reasonings, the impugned orders are set aside and the Writ Petitions are allowed with the following directions:-

i) The respondent shall issue fresh notice, clearly setting out the proposal, which, he proposes to implement, and give the petitioner 15 days' time to submit their objections, after which, an opportunity of personal hearing shall be afforded, and the assessment shall be redone in accordance with law.

6. The Writ Petitions are allowed, as indicated above. However, there shall be no order as to costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle,
Chennai - 600 050.

+1cc to Mr.P.V.Sudakar, Advocate SR.No.49529
+1cc to Special Government Pleader SR.No.49439

Writ Petition No.12919 to 12925

SSI(CO)
GN(03/08/2017)