IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17884 & 17885 of 2017
and
W.M.P. Nos.19412 to 19415 of 2017

Tvl.Socomec Innovative Power Solutions pvt Ltd
represented by its authorised Signatory
B-I,II Floor, Thiru-Vi-Ka Industrial Estate,
Guindy,Chennai- 600 032. ...
Petitioner in both WPs.

Vs.

The Commercial Tax Officer,
Alandur Assessment Circle,
No.12, Vedagiri Street,
Alandur, Chennai 600 016. ... Respondent in both WPs.

Prayer in W.P.No.17884 of 2017: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records of the Order of Assessment passed by the respondent in TIN 33820702648/2014-2015 dated 16.06.2017 and quash the same as illegal, arbitrary, unconstitutional and having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders of assessment in accordance with law after granting an opportunity of personal hearing to the petitioner.
Prayer in W.P.No.17885 of 2017: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records of the Order of Assessment passed by the respondent in TIN 33820702648/2013-2014 dated 16.06.2017 and quash the same as illegal, arbitrary, unconstitutional and having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders of assessment in accordance with law after granting an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.R.Ganesh Kanna
(in both WPs.)

For Respondent : Mr.K.Venkatesh,
(in both WPs.) Government Advocate.

C O M M O N   O R D E R

Heard Mr.Ganesh Kanna, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent accepting notice on behalf of the respondents. With the consent on either side, the writ petitions themselves were taken up for disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Central Sales Tax Act (CST Act) and the Tamil Nadu Value Added Tax Act (TNVAT Act). The Petitioner has challenged the orders passed by the respondent by invoking powers under Section 84 of the TNVAT Act for the assessment year 2013-14 and 2014-15. The undisputed fact is that the assessments were completed on 29.01.2016 after considering the objections filed by the petitioner to the pre-assessment notice. After about 1-1/2 years, a notice was issued by the respondent Assessing Officer dated 13.06.2017 by stating that there was an error apparent on the face of the order of assessment and the respondent is proposed to revise the same under Section 84 of the TNVAT Act. The petitioner submitted their objections on 16.06.2017 raising various contention. On the very same day, the respondent has passed the impugned orders. Though at the first blush, the impugned orders appear to be a reasoned order, on the closer scrutiny, it is otherwise. All that the respondent has done is to extract the earlier proceedings and the contents of the notice under Section 84 of the TNVAT Act and referred to the objections filed by the petitioner and rejected the same stating that the petitioner has filed the documentary evidence on random basis which could not be concluded that the entire transactions were made likewise. Further it was observed that unless and otherwise, the relevant documents were filed for the transactions, it is not possible to accept the contentions putforth by the petitioner that the sale of goods to other State were from import and inter-state purchase goods. Thus, it was held that in the absence of the records, the objections filed by the dealer is overruled and the proposal to reverse the ITC is confirmed.

3.In my considered view, the Assessing Officer has passed the impugned order in a most arbitrary and unreasonable manner. Admittedly, it is the Assessing Officer who sought to re-open the assessment by invoking power under Section 84 of the TNVAT Act. Firstly, the aspect would be as to whether such order could have been passed under Section 84 of the TNVAT Act and whether there was an error apparent on the face of the order or the impugned order is on account of the change of opinion by the Assessing Officer as the assessment was completed by order dated 29.01.2016 by another Officer. Above all, while exercising the power under Section 84 of the TNVAT Act, adequate opportunity ought to have been given to the dealer which would include an opportunity of personal hearing as in the instant case, the impugned orders were passed on the ground that relevant documents were not filed by the dealer. There is nothing on record to show that the respondent had issued notice to the dealer and called for documents and in spite of such notice, they failed to produce the same. Obviously, there can be no such record because the objections were filed on 16.06.2017 and the impugned orders were also passed on the very same day. Thus, this Court has no hesitation to hold that the impugned order is an outcome of non-application of mind in violation of principles of natural justice and arbitrary exercise of power.

4.For all the above reasons, the writ petitions are allowed, the impugned orders passed by the respondent are set-aside and the matter is remanded to the respondent for fresh consideration who shall issue notice to the petitioner directing the petitioner to submit the documents clearly stating that as to what are the documents that are required to be produced and after receipt of the reply/documents, the respondent is directed to afford an opportunity of personal hearing and pass fresh orders on merits and in accordance with law by assigning reasons. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rkp

To
The Commercial Tax Officer,
Alandur Assessment Circle,
No.12, Vedagiri Street,
Alandur, Chennai 600 016.

+1cc to Mr.A.Ravichandran,Advocate sr.49336

+1cc to Special Government Pleader(Taxes) sr.49620

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ak(co)
ss(2/8/2017)