IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM:

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

W.P.Nos.19044 to 19047 of 2017 and
W.M.P.Nos.20558 to 20561 of 2017

M/s.Plastic Omnium Auto Inergy India Private Limited,
Rep. by its Authorized Signatory,L.Vadivel,
Plot Nos.16,17 & 18
SIPCOT Industrial Complex, Phase – III,
Mukundarayapuram (village & post),
Vellore District,
Ranipet – 632 402. .. Petitioner in all W.Ps.

Vs.

Assistant Commissioner (CT),
Ranipet (Sipcot) Assessment Circle,
No.17, Market Feder Road,
Navalpur, Ranipet – 632 401. .. Respondent in all W.Ps.

Prayer: Writ petitions filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in CST/942172/2009-2010 CST/942172/2010-2011, TIN 33704363203/2013-14 and TIN 33704363203/2014-15 respectively, dated 30.06.2017 and quash the same, and further direct the respondent to redo the assessment in accordance with law after considering the objections and recording the reasons.

For Petitioner : Mr. N.Murali

For Respondent : Mr. K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.N.Murali, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent.

2. In the light of the consent given by the learned counsel on either side, the writ petitions themselves are taken up for disposal at this stage.

3. The petitioner, who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, (hereinafter referred to as "TNVAT Act") and Central Sales Tax Act (hereinafter referred as "CST Act") is before this Court, challenging the orders of assessment for the years 2009-10 and 2010-11 under the CST Act and for the years 2013-14 and 2014-15 under the TNVAT Act.

4. In normal circumstances, this Court will not interfere with an order of assessment, however, in the instant case, the Court is inclined to interfere with the impugned orders on the sole ground that the Assessing Officer misdirected himself and abdicated his statutory duty and responsibility as an Assessing Officer. The impugned orders are identical, except for certain slight factual difference. On a closer perusal of the impugned orders, one would get an impression that the Assessing Officer has considered the petitioner's objections to the revision notice, dated 28.04.2017. However, on a closer reading, it is seen that the Assessing Officer has verbatim repeated the report of the Enforcement Wing and the stand taken by the petitioner before the Enforcement Officer and then in a single line stated that he has carefully gone through the objections and the petitioner was already informed by the Enforcement Wing officials that their remedy is before the Appellate forum and therefore, the objections are overruled. The Assessing officer has to consider the objections given by the dealer and not solely to be guided by the report of the Enforcement Wing and this is the settled legal position.

5. It was further held that the report of the Enforcement wing officials can at best, be a cause of action to issue a notice and the Assessing officer is not bound by the report of the Enforcement wing but he has to independently consider the objections of the dealer, which the respondent has miserably failed to do so in the impugned assessment orders. This is sufficient to hold that the orders are illegal and liable to be set aside.

6. The petitioner has referred to the decision of the Hon'ble Division Bench of this Court in the case of M/s.West Coast Industries Vs. State of Tamil Nadu (2013) 57 VST 373 (Mad). Except for quoting the said decision and the other decisions relied on by the petitioner, the respondent has not discussed as regards his applicability or otherwise. Thus, one more grave error has been committed by the Assessing Officer. In the decision in M/s.West Coast Industries Vs. State of Tamil

Nadu (supra), the Court has held that wherever, a dealer had purchased the goods on the basis of C forms without including them in the certificate under the CST Act either inadvertently or out of ignorance, no penalty need to be levied under Section 10 (b) of the CST Act. The Division bench referred to a Circular issued by the Commissioner, dated 06.07.1984 in this regard. This aspect has been lost sight of by the Assessing officer. Thus, for the above reasons, the impugned orders are not sustainable in law.

7. In the result, the writ petitions are allowed and the impugned orders are set aside. The matters are remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner and independently consider their objections and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

svki/sli

To

Assistant Commissioner (CT),
Ranipet (Sipcot) Assessment Circle,
No.17, Market Feder Road,
Navalpur, Ranipet - 632 401.

+4cc to Mr.N.Murali, Advocate, S.R.No.53025
+1cc to the Special Government Pleader, S.R.No.53156

W.P.Nos.19044 to 19047 of 2017
and
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& 20561 of 2017

KS(CO)
CS/23/08/17