IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.9729 and 9730 of 2018
and W.M.P.No.11650 of 2018

CK Airtech India Pvt. Ltd.,
Rep. by its Director, V.Saravanan,
Plot No.129, SIPCOT, Phase-I,
Hosur. ... Petitioner in both W.Ps.

Vs.

The State Tax Officer (CT),
Hosur (North) Assessment Circle,
Hosur. ... Respondent in both W.Ps.

Prayer in W.P.No.9729 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the files of the respondent herein in TIN:33903320634/2011-16 dated 10.08.2017 and to quash the same.

Prayer in W.P.No.9730 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the respondent herein to rectify the assessment in TIN:33903320634/2011-16, dated 10.08.2017 and cancel the tax and penalty demands as prayed for by the petitioner in their application dated 03.03.2018 and as reiterated on 21.03.2018.

For Petitioner : Mr.K.A.Parthasarathy
(in both W.Ps.) for Mr.N.Inbarajan

For Respondent : Mrs.G.Dhanamadhri,
(in both W.Ps.) Government Advocate (Taxes)

COMMON ORDER

Heard Mr.K.A.Parthasarathy, learned counsel for Mr.N.Inbarajan, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent. With consent on either side, these writ petitions are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") has filed these two writ petitions, viz., W.P.Nos.9729 and 9730 of 2018, wherein, in W.P.No.9729 of 2018, the petitioner has questioned the assessment order dated 10.08.2017 for the assessment years 2011-16.

3. In W.P.No.9730 of 2018, the petitioner has sought for a direction upon the respondent to rectify the assessment dated 10.08.2017, and cancel the tax and penalty demanded from the petitioner by considering their applications dated 03.03.2018 and 21.03.2018 filed under Section 84 of the TNVAT Act.

4. After elaborately hearing the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the respondent, I find that there is a fundamental error committed by the respondent while initiating revision of assessment. The first mistake committed by the respondent is issuing an improper VAT Audit notice dated 20.04.2017.

5. On a perusal of the said notice, I find that no particulars have been given as to who are the registration cancelled dealers, what are their TIN numbers and the invoice details, which were obtained by the respondent from cross verification of the data available in the official website of the Department. The error, which had crept in while issuing the VAT Audit notice is perpetuated and ultimately resulted in an illegal assessment order. The respondent ought not to have passed a common assessment order for all the assessment years from 2011-2016. These issues are sufficient to set aside the impugned proceedings commencing from the VAT Audit notice dated 20.04.2017.

6. The petitioner after receiving the assessment order, has given their objections dated 19.06.2017 and 13.02.2018. These objections have been received by the respondent. However, the respondent did not take up any proceedings for rectification of the assessment. Therefore, a formal application under Section 84 of the TNVAT Act was filed on 03.03.2018 and the same request was reiterated on 21.03.2018. These applications are also pending before the respondent.

7. From the reply given by the petitioner, it is seen that the transactions done by the petitioner with four dealers were during the period when their respective registration certificates were valid. The cancellations are said to have occurred much after the petitioner had effected purchase from those dealers. Further, if an RC cancellation is given with retrospective effect that cannot put the purchasing dealer to prejudice and it has been held that retrospective cancellation will not affect the purchasing dealer and on that ground, the input tax credit availed by the purchasing dealer cannot be reversed. Thus, on account of the fundamental error committed by the respondent, the impugned proceedings call for interference.

8. Accordingly, Writ Petition No.9729 of 2018 is allowed, the impugned assessment order as well as the VAT Audit notice dated 20.04.2017 are set aside and a direction is issued to the respondent to issue a fresh notice giving full particulars and provide 15 days time to the petitioner to submit their objections. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment for each of the assessment years separately.

9. Needless to mention, the VAT Audit notice, which has been directed to be issued has to be issued separately for each assessment years. The personal hearing should be effective and not an empty formality and all the documents produced by the petitioner should be taken into consideration and a speaking assessment order be passed in accordance with law.

10. In the light of the orders passed in Writ Petition No.9729 of 2018, Writ Petition No.9730 of 2018 is closed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The State Tax Officer (CT),
Hosur (North) Assessment Circle,
Hosur.

+1 CC to Spl. Govt. Pleader sr 29687.
+1 CC to Mr.N. Inbarajan, Advocate sr 29307.

GJII(CO)
SP(14/05/2018)