IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.6960 to 6963 of 2018
and W.M.P.Nos.8610 to 8613 of 2018

Tvl.Win Technologies, rep. by its
Partner, Thiru S.Saravanan,
No.18/50, Moosa Street,
T.Nagar, Chennai-600 017. ... Petitioner in all W.Ps.

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Beach Road,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai-600 005.

3.The Joint Commissioner (C.T.)
Enforcement Wing-1, C.T.Buildings,
Greams Road, Chennai-600 006.

4.The Commercial Tax Officer
Enforcement Wing Group-IV,
C.T.Buildings, Greams Road,
Chennai-600 006.

5.The Commercial Tax Officer,
Nandanam Assessment Circle,
No.48, Pasumpon Muthramalingadevar Salai,
Chennai-600 028. ... Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 5th respondent in TIN No.33881581823/2014-15, 2013-14, 2012-13 and 2015-16 dated 15.01.2018, 15.01.2018, 05.01.2018 and 15.01.2018 respectively received by the petitioner on 19.02.2018 and quash the same and to direct the respondents to pass orders after following the procedure contemplated under the TNVAT Act for the assessment years 2014-15, 2013-14, 2012-13 and 2015-16 respectively.

For Petitioner : Mr.M.Md.Ibrahim Ali
(in all W.Ps.)

For Respondents : Mrs.Narmadha Sampath,
(in all W.Ps.) Additional Advocate General
assisted by Mr.M.Hariharan,
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Additional Advocate General assisted by Mr.M.Hariharan, learned Additional Government Pleader for the respondents. With consent on either side, these writ petitions are taken up for final disposal.

2. Before I proceed to consider the contentions advanced by the learned counsel for the petitioner in these writ petitions, a word about the assessing officer needs to be mentioned.

3. The fifth respondent assessing officer Tmt.K.Premalatha, had issued notices to the petitioner proposing to revise the assessment for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16. The defects/discrepancies pointed out in respect of all the assessment years were identical viz.,

(i) ITC reversal for purchase effected for registration cancelled dealers;

(ii) ITC reversal on cross verification of buyer and seller annexure;

(iii) Commission received;

(iv) Repairs and replacement charges;

(v) Purchase suppression on purchase turnover difference as per balance sheet and Form WW; and

(vi) Sales suppression on sales turnover difference as per balance sheet and Form WW.

4. The petitioner submitted their objections to the proposal to revise the assessment vide objections dated 27.12.2017, and produced records in support of their contentions on 29.12.2017. The petitioner has also referred to several orders and judgments passed by this Court in support of their contentions.

5. It is heartening to note that the assessing officer Tmt.K.Premalatha, as per the objections filed by the petitioner, took note of the decisions issued by this Court and deleted the proposals with regard to ITC reversal for purchase effected for registration cancelled dealers and ITC reversal on cross verification of buyers and sellers annexure and also the proposal to levy penalty on the above two heads. It is very rare feature that an assessing officer applies the mind to the judicial pronouncements and takes a proper decision, even at the pre-revision stage. This needs to be appreciated. However, in respect of the remaining defects, which were pointed out, the assessing officer has confirmed the proposal. In my considered view, if a little more effective exercise had been done by the assessing officer, there are chances that few of the other proposals could have been modified or deleted. However, I do not wish to give any opinion in this regard, since the petitioner has relied upon a decision in support of the contention regarding commission received, and with regard to repairs and replacement charges, the petitioner has referred to the service tax remitted, and with regard to difference as per balance sheet and Form WW, the petitioner has furnished certain figures and stated that there is no discrepancies. The assessing officer would state in this regard that, the assessee did not produce corroborating records. If a notice had been issued to the assessee to produce corroborating documents, they could have produce the records or upon failure, adverse inference could have been drawn. Therefore, with regard to these issues, this Court is of the view that the matter can be remitted to the officer for fresh consideration.

6. With regard to the contentions raised by the learned counsel for the petitioner stating that the entire revision of assessment itself is without jurisdiction on the ground that the Joint Commissioner of Commercial Taxes is not empowered to authorise an inspection, as he is only the Commissioner, who can do so in terms of Section 64(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the Act"). However, such a contention cannot be accepted in the instant case, because what was conducted was only an inspection by the Enforcement Wing and not a VAT audit, as contemplated under Section 64(4) of the Act. In terms of Section 65 of the Act, any officer of the Department is entitled to call for details from the assessing officer. Therefore, the said contention advanced by the petitioner deserves to be rejected.

7. As pointed out earlier, the three issues, which were decided against the assessee could be reconsidered by the fifth

respondent after giving opportunity. However, for such reason, this Court does not propose to set aside the findings of the assessing officer under those heads, but would direct the petitioner to treat the findings as a show cause notice and give further reply.

8. Accordingly, these writ petitions are disposed of by directing the petitioner to submit their objections to the impugned assessment orders by treating the same as show cause notices under the heads,

(i) Commission received;

(ii) Repairs and replacement charges; and

(iii) Sales suppression on sales turnover difference as per balance sheet and Form WW.

The objections shall be filed by the petitioner within a period of fifteen days from the date of receipt of a copy of this order, after which, the fifth respondent shall afford an opportunity of personal hearing, consider the documents, which the petitioner may place reliance on and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government,
The State of Tamil Nadu,
Department of Commercial Taxes,
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Chennai-600 009.

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Nandanam Assessment Circle,
No.48, Pasumpon Muthramalingadevar Salai,
Chennai-600 028.

+ 4 cc to Mr.M.Md.Ibrahim Ali Advocate,SR.25314
+ 1 cc to The Special Govt.Pleader, SR.25739

W.P.Nos.6960 to 6963 of 2018

gmi(co)

nr 27/04/2018