In the High Court of Judicature at Madras

Dated : 28.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.11175 to 11179 of 2018 &
WMP.Nos.13111 to 13115 of 2018

M/s.Omne Agate Systems (P) Ltd.,
rep.by its Authorized Signatory
Mr.E.Venkatakrishnaiah ...Petitioner in all the WPs

Vs

1.The Assistant Commissioner (ST),
Nungambakkam Assessment
Circle, No.88, Mayor Ramanathan
Salai, Chennai-31.

2.The Commercial Tax Officer,
Group VIII Enforcement (North),
PAPJM Building, I Floor,
Greams Road, Chennai-6. ...Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the first respondent in TIN No.33340541213/2010-11, TIN No.33340541213/ 2011-12, TIN No.33340541213/2012-13, TIN No.33340541213/2013-14 and TIN No.33340541213/2014-15, all dated 28.3.2018, quash the same and further direct the first respondent to consider the objections filed in the light of the law laid down by this Court after affording an opportunity of cross examination as requested by the petitioner and thereafter pass orders in accordance with law laid down by this Court.

For Petitioner : Mr. V.Sundareswaran
For Respondents : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, which is a dealer on the file of the first respondent under the provisions of the Tamil Nadu Value

Added Tax Act, 2006 and the Central Sales Tax Act, 1956, is a manufacturer and supplier of electrical equipment. In these writ petitions, the petitioner has challenged the assessment orders for the years 2010-11 to 2014-15.

3. The first respondent issued notices dated 20.10.2017 proposing to reverse the input tax credit availed by the petitioner on three grounds namely

(i) details of annual scrutiny cross verification of buyer and seller;

(ii) verification of purchase details from other end dealers annexure II; and

(iii) verification of consignor and consignee movement.

4. The petitioner gave their objections dated 15.3.2018. It is pointed out by the learned counsel for the petitioner that in the objections, the petitioner specifically sought for an opportunity to submit documentary evidence. Furthermore, it has been stated that they require an opportunity to cross examine the other end dealer to enable them to satisfy about the correctness and completeness of the transactions reported by the other end dealers in their annexure to the returns and to validate the same and to satisfy about it before replying the same and submitting their objections. It is also submitted that the purchases were fully accounted for in their books of accounts without any omissions.

5. On a perusal of the objections dated 15.3.2018, this Court finds that they are detailed objections.

6. The learned counsel for the petitioner would submit that there was a specific request made by the petitioner to the first respondent to grant an opportunity of personal hearing. However, the first respondent insisted that such a request should not be made in the reply dated 15.3.2018 and if it is made, he will not accept the reply and therefore, the petitioner had to delete that sentence. The learned counsel for the petitioner further submits that along with their reply, they had given the details of invoices. Therefore, according to the learned counsel, if the first respondent was of the view that some more time details are required, one more opportunity could have been granted to the petitioner.

7. On perusal of the impugned assessment orders, this Court finds that there is no discussion as to why the objections filed by the petitioner are incorrect. The first respondent stated that the objections given by the petitioner were not acceptable as valid objections in the absence of documentary evidence. However, the petitioner was not called upon by the Assessing Officer to produce some more documentary evidence though certain annexure were filed along with the reply dated 15.3.2018. Thus, considering the facts and circumstances of the case and the nature of the proposal as stated in the notices dated 20.10.2017, this Court is of the considered view that the

assessments have to be reopened.

8. Accordingly, the writ petitions are disposed of by directing the petitioner to treat the impugned assessment orders as show cause notices and submit their objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the first respondent shall afford an opportunity of personal hearing and redo the assessments in accordance with law. Along with the objections, the petitioner shall enclose copies of relevant documents and if they require any other details, they shall clearly indicate as to what are the details required by them. After receipt of the objections, the opportunity of personal hearing to be granted should be effective and not an empty formality. After hearing the dealer, the first respondent shall redo the assessments by passing a speaking order. Till then, no coercive action shall be initiated against the petitioner for recovery of the tax and penalty as quantified in the impugned assessment orders. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
1.The Assistant Commissioner (ST), Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai, Chennai-31.
2.The Commercial Tax Officer, Group VIII Enforcement (North),
PAPJM Building, I Floor, Greams Road, Chennai-6.

+1cc to Mr.V.Sundareswaran, Advocate SR.No.32550
+1cc to Special Government Pleader Sr.No.32680

AD(CO)
sm:18.5.2018

WP.Nos.11175 to 11179 of 2018&
WMP.Nos.13111 to 13115 of 2018