IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.1.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.34399 & 34400 OF 2017 &
WMP.NOS.38232 & 38233 OF 2017

M/s.Srivatsan Surveyors Private
Limited, rep.by its Director
Saranya Srinivasan ...Petitioner

Vs.

The Assistant Commissioner (ST),
Adyar Assessment Circle,
No.46, Greenways Road,
Chennai-28. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for issuance of Writs of Certiorarified Mandamus to call for the records of the respondent respectively in CST 980117/2013-14 dated 06.10.2017 and CST 980117/2014-15 dated 28.9.2017 and quash the same with a direction to the respondent to consider the documents filed.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, the learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956.

3. The respondent (predecessor officer) issued the notices dated 03.8.2017 proposing to reverse the input tax credit under Sections 19(2)(v) and 19(5)(c) of the State Enactment and the petitioner was directed to file their objections. The petitioner promptly sent their reply respectively dated 29.8.2017 and 30.8.2017 enclosing the documents, which, according to the petitioner, would establish that the proposed reversal is not warranted. Unfortunately, the petitioner did not give any explanation, but only enclosed the documents.

4. In the meantime, it appears that there is a change of officer and the current incumbent passed the impugned orders

stating that the petitioner filed certain documents without explanation and on verification, he found that the reversal of the input tax credit is warranted. The impugned assessment orders are shown to have been passed under the provisions of the Central Enactment whereas the proposal in the notices dated 03.8.2017 was under the provisions of the State Enactment.

5. In any event, if the respondent was in possession of the documents filed by the petitioner, he should have analyzed those documents and given reasons as to why those documents were of no relevance and as to why reversal of the input tax credit was warranted. Thus, this Court is satisfied that the impugned assessment orders are non speaking orders. However, the dealer also has to be partially blamed for not putting in writing the objections to the proposal in the notices dated 03.8.2017. Balancing the interest of the Revenue as well as that of the petitioner, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer to clearly put forth their stand and point out all the details, both on facts and in law.

6. 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 along with relevant documents. On receipt of the objections and documents, the respondent shall afford an opportunity of personal hearing, hear the petitioner and redo the assessment in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (ST), Adyar Assessment Circle, No.46, Greenways Road, Chennai-28.

+ 1 cc to Mr.R.Kumar Advocate,SR.787
+ 1 cc to The Govt.Pleader(Taxes), SR.1175

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nr 02/02/2018