In the High Court of Judicature at Madras

Dated : 11.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.12185 to 12191 of 2018 &
WMP.Nos.14214 to 14220 of 2018

Onload Gears, rep.by its Partner
S.V.Gopalan ...Petitioner in all Wps.

Vs

The Assistant Commissioner (ST),
Pattaravakkam Assessment Circle,
No.127, II Floor, Yadhava Street,
Padi, Chennai-50. ...Respondent in all Wps

Common Prayer:

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the files of the respondent respectively in TIN/33261361586/2010-11, TIN/33261361586/2011-12, TIN/33261361586/2012-13, TIN/33261361586/2013-14, TIN/33261361586/2014-15,TIN/33261361586/2015-16 and TIN/33261361586/ 2016-17, all dated 31.1.2018 and quash the same.

For Petitioner : Mr.N.Prasad
For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Heard both. In the light of the glaring errors, which are apparent on the face of the impugned orders and an opportunity of personal hearing, though was specifically fixed on 05.2.2018, having not been granted, this Court has taken up the writ petitions for joint disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has approached this Court challenging the assessment orders for the years from 2010-11 to 2016-17.

3. The revision notices dated 28.2.2017 were issued to the petitioner for the aforementioned assessment years. Five issues were common for all the assessment years and the brief allegations against the petitioner are pertaining to

(i) mismatch of the details filed in annexure I of the petitioner as well as annexure II of the selling dealers;

(ii) registration of the selling dealers, which has been canceled with retrospective effect;

(iii) tax not deducted at source; and

(iv) discounts, which have been granted, are not liable for deduction.

In respect of the assessment year 2016-17, one additional aspect, which arises for consideration, is pertaining to allegation of stock variations.

4. The petitioner sent a brief reply dated 16.10.2017 requesting certain details, followed by an elaborate reply dated 16.11.2017. On receipt of the said replies, the respondent issued notices dated 09.1.2018 for the assessment years 2011-12 to 2015-16 and notices dated 12.1.2018 for the years 2010-11 and 2016-17. In the said notices dated 09.1.2018 and 12.1.2018, the respondent fixed for a personal hearing on 05.2.2018 at 3 PM and directed the dealer to be present for the personal hearing along with relevant documents. On receipt of the said notices dated 09.1.2018 and 12.1.2018, the petitioner also sent further representations dated 29.1.2018 explaining their stand with regard to non deduction of tax at source on the ground that those transactions relate to repair and maintenance and a few sample invoices of materials purchased and labour invoices used in repairs and maintenance of their machinery were submitted.

5. With regard to the discounts, which were allowed after the sales took place, the petitioner informed the Assessing Officer that they had already submitted credit notes along with their reply dated 16.11.2017 and enclosed relevant invoices for the discounts allowed to domestic consumers wherein tax was fully paid. These additional representations along with annexure were received by the officer on 29.1.2018. Unfortunately, the Officer, instead of waiting till the date of personal hearing already fixed i.e. 05.2.2018, in a hurried manner, completed the assessments and passed the impugned orders on 31.1.2018. However, the impugned orders were served on the petitioner only on 24.4.2018. It remains unexplained as to why for nearly four months, the impugned orders have not been served on the petitioner.

6. This Court has carefully gone through the impugned orders.

7. At the first blush, it appears that the impugned orders are speaking orders and contain detailed reasons. However, the discussion is only in the last paragraph of the orders and much of the issues, which were raised by the petitioner, remain unanswered, especially with regard to the allegation of non deduction of tax at source. This Court also finds that certain of the issues were answered in favour of the dealer by accepting their reply and the proposals have been dropped.

8. The learned counsel for the petitioner has drawn the attention of this Court to the statement recorded by the Enforcement Officer, who visited the business premises of the petitioner on 30.9.2016.

9. By way of illustration, this Court would refer to one of the issues, which were the subject matter of challenge namely non deduction of the tax at source on repairs and maintenance. After taking note of the replies given by the petitioner stating that they are all maintenance works and related charges, the audit team stated that such an issue should be reconciled before the Assessing Officer, who has to peruse the relevant documents. Unfortunately, this aspect has not been taken note of by the Assessing Officer and the Assessing Officer has not rendered a finding as to how the proposal to tax the transaction on the ground of non deduction of tax at source is justified.

10. The impugned orders are in violation of the principles of natural justice and they are the outcome of total non application of mind failing to deal with various issues by considering the objections, which are good and sufficient reasons to set aside the impugned proceedings.

11. For all the above reasons, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for a fresh consideration. The respondent shall fix a date for personal hearing, hear the authorized representative of the petitioner in detail, peruse the documents that they may produce and redo the assessments in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST), Pattaravakkam Assessment Circle,
No.127, II Floor, Yadhava Street, Padi, Chennai-50.

Copy to:

The Section Officer, ER section,
High Court, Madras.

+1cc to M/s.N.Inbarajan, Advocate sr.no.36113
+1cc to Special Government Pleader(Taxes)

WP.Nos.12185 to 12191 of 2018&
WMP.Nos.14214 to 14220 of 2018

ak(co)
nr 25/06/2018