In the High Court of Judicature at Madras

Dated : 02.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.19829 to 19832 of 2018 &
WMP.Nos.23286 to 23289 of 2018

Tvl.Hema Engineering Industries Limited, rep.by its Authorized Signatory Naresh Kumar ...Petitioner in all WPs

Vs

The Assistant Commissioner (ST), Hosur (South) Assessment Circle, Hosur. ...Respondent in all WPs

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 in TIN: 33793362162/2013-14, TIN: 33793362162/ 2014-15, TIN: 33793362162/2015-16 and TIN: 33793362162/2016-17, respectively all dated 29.6.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner in all WPs : Mr.R.Senniappan

For Respondent in all Wps : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal. One more reason, which has convinced this Court to dispose of these writ petitions at this stage is on account of the fact that the impugned orders are non speaking orders and are devoid of reasons.

2. The petitioner sent elaborate replies dated 17.10.2017, 28.12.2017 and 04.7.2018 to the revision notices dated 30.8.2017

issued by the respondent. The respondent verbatim extracted the objections given by the petitioner to the proposed revision and in the last paragraph, observed that the replies filed by the petitioner were carefully considered and that the same were not supported by documentary evidence, as the petitioner did not file any details.

3. In the considered view of this Court, the issues, which were pointed out in the revision notices dated 30.8.2017, are broadly three in number, namely

(i) mismatch of the turnover
(ii) purchases made from registration cancelled dealers and
(iii) reversal of input tax credit for invisible loss.

4. So far as the first issue is concerned, it is necessary that the respondent should furnish the details of the mismatch because the same have been culled out by the respondent from the official website of the Tamil Nadu Commercial Taxes Department. Therefore, for the petitioner to submit an effective reply, they should be provided full details and on receipt of the details, an enquiry is required to be undertaken and only thereafter, an assessment order could be passed, as the guidelines for completing such an assessment on that ground have been laid down in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343].

5. So far as the issue pertaining to the purchases alleged to have been effected from the registration cancelled dealers is concerned, if the registration has been cancelled retrospectively, then the purchasing dealer cannot be made liable. This aspect has to be enquired into, for which, relevant details are required to be furnished.

6. So far as the issue pertaining to the reversal of input tax credit on the ground of invisible loss is concerned, this Court, in the case of Interfit Techno Products Ltd. Vs. Principal Secretary/Commissioner of Commercial Taxes [reported in (2015) 81 VST 389], held that a uniform percentage cannot be adopted and issued certain directions as to how the invisible loss has to be computed.

7. For all the above reasons, the assessments will have to be necessarily redone. Under normal circumstances, this Court would have set aside the impugned assessment orders. But, this Court finds that the petitioner's objections are dealing with only the legal position without elaborately stating about the factual matrix, which the petitioner is required to do, so that the Assessing Officer can examine the matter in a proper manner.

8. Accordingly, the writ petitions are disposed of directing the petitioner to treat the impugned proceedings as show cause notices and submit their further reply clearly stating the factual matrix as regards the purchases effected by them and as to how there is no case for reversal of input tax credit for invisible loss. After receiving the further reply, the respondent shall afford an opportunity of personal hearing to the petitioner, consider the earlier replies also, furnish the details regarding mismatch and registration cancelled dealers, give adequate opportunity to the petitioner to place all the records and redo the assessments in accordance with law. Till the above directions are complied with, no coercive action shall be taken against the petitioner. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST), Hosur (South) Assessment Circle, Hosur.

+1cc to Mr.R.Senniappan, Advocate Sr.53560
+1cc to the Special Government Pleader Sr.52989

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srg 11/08/2018