IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.36984 to 36988 of 2016
and
W.M.P.Nos.31788 to 31792 of 2016

M/s.Nadi Airtechnics Pvt.Ltd.,
represented by its Managing Director,
No.34, G.N.T.Road, Ponniammanmedu,
Madhavaram,
Chennai - 110. ... Petitioner in all the W.Ps.

vs.

The Commercial Tax Officer,
Madhavaram Assessment Circle,
Chennai - 66. ... Respondents in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in his impugned proceedings in TIN:33811082263/2010-11, TIN:33811082263/2011-12, TIN:33811082263/2012-13, TIN:33811082263/2013-14 & TIN:33811082263/2014-15 quash the notice dated 31.08.2016 issued therein.

For Petitioner : Mr.R.L.Ramani,
Senior Counsel
for Mr.B.Raveendran

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

COMMON ORDER

These writ petitions are filed challenging the notice of proposal issued in respect of the assessment years 2010-2011 to 2014-2015.

2. Heard the learned senior counsel appearing for the

petitioner and the learned Government Advocate(Tax) appearing for the respondent.

3. Learned senior counsel appearing for the petitioner submitted that though the present writ petitions are filed challenging the notice of proposal, still they are maintainable in view of the fact that similar notices were set aside by this Court while dealing with mis-match issue, in a case reported in 2017(19) VST 343 JKM Graphics Solutions P.Ltd. v. C.T.O.(Mad). Learned senior counsel, however, fairly submitted that the petitioner is confining the challenge against the impugned notice only in respect of mis-match issue and the purchase made from registration cancelled dealers. Learned senior counsel further contended that in the absence of material details in the notice of proposal with regard to the mis-match issue and also in the absence of the material particulars namely, the date of cancellation of the registration of the other end dealers, the petitioner will not be in a position to give an effective reply to the notice of proposal. Thus, he contended that the impugned notice only insofar as the issue regarding the mis-match and the purchase made from registration cancelled dealers is to be set aside and the matter needs to be remitted back to the Assessing Officer to issue fresh notice on those two issues. He further submitted that in respect of other issues dealt with in the notice of proposal, the petitioner would give suitable reply to the Assessing Officer.

4. Learned Government Advocate submitted that the petitioner is entitled to seek for details, if any, while making the reply and therefore, that cannot be a reason for interfering with the notice of proposal. However, she is not disputing the fact that similar notices were interfered by this Court in the decision made in batch of case reported in 2017(19) VST 343 JKM Graphics Solutions P.Ltd. v. C.T.O.(Mad), by remitting the matter back to the Assessing Officer.

5. Upon hearing both sides, it is evident that the petitioner is aggrieved against the notice of proposal only insofar as the following issues dealing with mismatch and purchase made from registration cancelled dealers in respect of the respective assessment years, as follows:

i) Issue Nos.3, 4, 5 & 6 in respect of the assessment year 2010-2011.

ii) Issue Nos.2.1, 3, 4, 5 & 6 in respect of the assessment year 2011-2012.

iii) Issue Nos.2.1, 3, 4, 5 & 6 in respect of the assessment year 2012-2013.

iv) Issue Nos. 3, 4, 5 & 6 in respect of the assessment year 2013-2014.

v) Issue Nos. 3, 4, 5 & 6 in respect of the assessment year 2014-2015.

6. Insofar as the mis-match issue is concerned, there is no dispute to the fact that the said issue was considered in detail and this Court, by an elaborate order passed in JKM Graphics Solutions P.Ltd. v. C.T.O.(Mad) reported in 2017(19) VST 343 (Mad) issued certain guidelines as to how the mis-match issue has to be dealt with by the Assessing Officer by adopting the centralised mechanism.

7. Learned counsel for the respondent submitted that the Revenue is in the process of adopting such centralised mechanism and therefore, that will take some time. In any event, as the present notice issued in respect of the mis-match issue is not in consonance with the order already passed by this Court in the above said case, this Court is of the view that by following the said order, the present impugned notice, insofar as the mis-match issues are concerned, is liable to be set aside and the matter is to be remitted back to the Assessing Officer.

8. Equally, in respect of the other issue, namely the purchase from the registration cancelled dealers is concerned, this Court finds that the notice does not give the details of cancellation of registration of the other end dealers and therefore, as rightly pointed out by the learned senior counsel, the petitioner will not be in a position to give an effective reply to the notice of proposal insofar as that issue is concerned. Therefore, it is for the Assessing Officer to issue fresh notice in respect of that issue also with material particulars so as to enable the petitioner to give effective reply.

9. Accordingly, all these writ petitions are allowed in part and the impugned notices insofar as those issues dealt with supra are set aside. Consequently, the matter is remitted back to the Assessing Officer to reissue the notice by giving the material details and particulars as discussed supra in respect of both issues. It is made clear that insofar as the other issues are concerned, this Court is not interfering with the same as it is for the petitioner to give suitable reply to those issues within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

vsi

To
The Commercial Tax Officer,
Madhavaram Assessment Circle,
Chennai - 66.

+1cc to Mr.B.Raveendran, Advocate SR.No.62721
+1cc to Government Pleader SR.No.62705

W.P.Nos.36984 to 36988 of 2016

RGN(CO)
RMP(24/09/2018)