IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.26616, 26640, 26646, 26652 & 26654 of 2018
and
WMP.Nos.31020, 31013, 31008, 30986 & 31023 of 2018

Tvl.Regen PowerTech Private Limited
Represented by its Head Finance
L.Ramanathan ... Petitioner (in all WPs)

Vs.

The Assistant Commissioner (ST)
Nungambakkam Assessment Circle
88, Mayor Ramanathan Salai,
Chennai-600 031. ... Respondent (in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARI, calling for the records on the file of the respondent herein in TIN No.33340821349/2011-2012, 2012-2013, 2013-2014, 2014-2015 & 2015-2016 respectively dated 27.08.2018 and quash the same.

For Petitioner : Mr.R.L.Ramani
Senior Counsel appearing for
Mr.R.Sivaraman
(in all Wps)

For Respondent : Mr.M.Hariharan
Additional Government Pleader
(in all WPs)

COMMON ORDER

All these writ petitions are filed by one and the same petitioner. The petitioner is aggrieved against the orders of assessment dated 27.08.2018 passed in respect of the assessment years 2011-2012 to 2015-2016.

2. Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these writ petitions are taken up for final disposal, as the issue involved in these writ petitions lies in narrow compass,

which can be considered and decided at the admission stage itself.

3. The Assessing Officer has issued revised notice of proposal dated 30.06.2017 for all the above said assessment years. The petitioner filed their reply on 19.12.2017. A personal hearing was also conducted on 02.07.2018. Thereafter, the impugned orders were passed. The Assessing Officer, though dropped the proceedings in respect of the other issues, has however confirmed the proposal in respect of one issue on "deemed sale value of purchase suppression-annual scrutiny purchase details", for each assessment year.

4. Mr.R.L.Ramani, learned Senior Counsel appearing for the petitioner submitted that the impugned orders were passed not strictly adhering to the principles of natural justice, even though on the face of it, appears as though such principle was not violated. His specific contention is that the detailed reply submitted by the petitioner on 19.12.2017, in respect of the issue in dispute viz., the purchase suppression, with facts and figures and also with a specific explanation that VAT credit has not been taken by the petitioner in respect of purchases for which credits were not eligible, such as computer spares, purchase of snacks for employees refreshments and purchase of assets which were not used for construction of sub station. Thus, he contended that the Assessing Officer while dealing with the said issue ought to have considered the objection raised by the petitioner as against the alleged purchase suppression and given detailed finding as to how the explanation/objection submitted by the petitioner on the above said issue is not acceptable. Therefore, the learned Senior Counsel contended that the Assessing Officer is not justified in rejecting the objection by one line order simply, by stating that the petitioner did not account for the disputed purchases. He has also pointed out that the Assessing Officer, having taken note of the fact that the petitioner has not taken VAT credit against those disputed purchases, ought to have considered the fact that there is no loss of revenue in respect of the alleged purchase suppression. Thus, the crux of the contention of the learned Senior Counsel is that the impugned order passed on the above said issue for each assessment year is an outcome of non-application of mind to the reply/objection made by the petitioner. He further submitted that the Assessing Officer is not entitled to arrive at deemed sale value of purchase suppression, as the same can be done only by the Legislation. Therefore, the learned Senior Counsel submitted that had the Assessing Officer called upon the petitioner to produce the books of accounts maintained by them, it would have revealed the entries made in respect of the disputed purchases also. Thus, the learned Senior Counsel contended that an opportunity may be given to the petitioner to place such books of accounts before

the Assessing Officer to disprove the allegations of purchase suppression.

5. Per contra, the learned Additional Government Pleader for the respondent submitted that it is the duty of the petitioner to disclose all the material facts while filing the returns with Annexure. He further submitted that the Annexure filed with the returns did not contain the disputed purchase. Thus, he contended that the Assessing Officer cannot be faulted in passing the impugned orders, more particularly, when the same was passed after considering the objection raised by the petitioner and also after affording an opportunity of personal hearing.

6. Heard both sides.

7. The only dispute between the parties is in respect of the issue viz., purchase suppression. According to the revenue, certain purchases made by the petitioner were not reflected in the Annexure filed along with returns. However, the petitioner through their reply to the notice of proposal sought to explain that they have not taken VAT credit in respect of those purchases and that the assets were not used for furtherance of manufacture of their components. The Assessing Officer has, in fact, found that the petitioner did not avail VAT credit against those purchases. However, he confirmed the proposal only on the reason that the petitioner has not accounted for those purchases and that they have not shown the same in the Annexure-1 filed with monthly returns. It is the contention of the petitioner that even though the Annexure-1 did not contain those details of purchase for which VAT credit was not taken, the account books maintained by them would reflect those purchases and therefore, if the Assessing Officer go through the said account books, he would be in a position to consider the force of the objection raised by the petitioner. A careful perusal of the notice of proposal, the objections raised by the petitioner and the orders of assessment passed by the respondent would show that the Assessing Officer has not considered the objection raised by the petitioner in respect of the disputed issue viz., purchase suppression, in a proper and perspective manner, by giving a finding as to how the objection raised by the petitioner cannot be accepted. Except by saying that the petitioner has not accounted the purchase, based on the reason that the said purchases were not shown in the Annexure-1, the Assessing Officer has not given any other finding or reason as to how such conclusion was arrived based on the perusal of the material documents including the account books maintained by the petitioner. It is stated by the petitioner that on account of such non-disclosure of the disputed purchase in the Annexure-1, no revenue loss has occurred. This contention also deserves for

reconsidering the issue once again. Therefore, this Court is of the view that if one more opportunity is given to the petitioner, it will not defeat the interest of the revenue, when it is admitted by the Assessing Officer that the petitioner has not taken VAT credit against those purchases. At the same time, as this Court is of the view that the petitioner has admittedly, failed to produce the books of account before the Assessing Officer at the time of personal hearing, the matter can be remitted only by putting the petitioner on some terms as follows:

8. Accordingly, all these writ petitions are disposed of as follows:

(a) The impugned order insofar as the issue relating to the purchase suppression for each assessment year is set aside and consequently, the matter is remitted back to the Assessing Officer to re-do the assessment once again on that issue, after giving one more opportunity of personal hearing to the petitioner, subject to the condition that the petitioner pays 10% of the tax demand within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such payment of tax as stated supra, the Assessing Officer shall inform the date of personal hearing to the petitioner.

(c) On completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on the above said issue alone within a period of four weeks thereafter.

(d) Insofar as other issues dealt with in the impugned orders and not the subject matter of these writ petitions are concerned, the impugned orders stand.

(e) It is made clear that this Court is not expressing any view as such on the merits and contentions raised by the parties, as it is for the Assessing Officer to consider the said issue afresh.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
Nungambakkam Assessment Circle
88, Mayor Ramanathan Salai,
Chennai-600 031.

+1cc to Mr.R.Sivaraman, Advocate sr.no.71259
+1cc to Special Government Pleader sr.no.71343

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sv(co)
nr 31/10/2018