IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.12.2018

CORAM
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27046 & 27050 of 2018
and
W.M.P.Nos.31444 & 31451 of 2018

M/s. Interics Interior Management
Private Limited
represented by Mr.M.Sasikumar,
Associate Project Manager,
36G, Jyothi Illam,
North Parade road,
St.Thomas Mount,
Chennai - 16. ... Petitioner in both the W.Ps.

vs.

The Assistant commissioner (ST)(FAC)
Nandambakkam Assessment Circle,
Chennai. ... Respondent in both the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in TIN:33520542181/2016-17 & TIN:33520542181/2017-18 dated 28.08.2018 and quash the same as being without jurisdiction, violative of principles of natural justice and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.M.Hariharan
Additional Government Pleader (Tax)

COMMON ORDER

Both these writ petitions are filed questioning the notice dated 28.08.2018 issued in respect of the assessment years 2016-17 and 2017-18 calling upon the petitioner to file their objections on the proposal set out in the said notice.

2. The main grievance of the petitioner before this Court is that the respondent, while issuing the impugned notice of proposal, has made adjustment of the refund claim already made by the petitioner to the tune of Rs.83,50,810/- and thereafter, called upon the petitioner to file their objections in respect

of the excess I.T.C. to be reversed for a sum of Rs.30,15,446/- in respect of the assessment years 2016-17. Likewise, it is the grievance of the petitioner in respect of the assessment year 2017-18 that the Assessing Officer, even while issuing the impugned notice of proposal has made adjustment of Rs.13,75,781/- in respect of ITC taken during the year 2017-18. Therefore, it is contended before this Court that the impugned proceedings are in fact, is not a notice of proposal, and on the other hand, it is an order itself, adjusting the refund claim made by the petitioner towards the liability of the ITC reversal.

3. Learned counsel for the petitioner also submitted that the Assessing Officer has relied on certain clarification circulars without discussing any of the nature of activities carried on by the petitioner in the impugned notice. Therefore, he contended that in order to apply the said circular, the Authority should discuss something about the nature of activities carried on by the petitioner, which is totally absent in the notice.

4. The learned Additional Government Pleader appearing for the respondent submitted that the present writ petitions are not maintainable for the simple reason that what is challenged is only a notice of proposal and therefore, petitioner is having ample opportunity to place their objections before the respondent by way of filing the reply. He further submitted that the apprehension of the petitioner as if the refund claim made by the petitioner has been adjusted, is also not well founded as the Assessing Officer has only stated in the notice about such proposal and therefore, it is for the petitioner to make their objections.

5. Heard both sides.

6. There is no dispute to the fact that the impugned notice was issued by the competent authority. It is also not in dispute that the impugned notice called upon the petitioner to give their objection to the notice of proposal. The only apprehension of the petitioner is that the Assessing Officer has adjusted the refund claim made by the petitioner in the impugned proceedings itself even without hearing the petitioner.

7. Perusal of the impugned notice would show that the language of the same, while dealing with the refund claim of the petitioner and the proposed adjustment, was not properly coined. On the other hand, as rightly stated by the learned counsel for the petitioner, the impugned notice gives an impression as if the Assessing Officer has made the adjustment of refund claim and thereafter called upon the petitioner to give objection with regard to the balance liability. Needless to say, even at the stage of issuing notice of proposal, the Assessing Officer

is not entitled to make any adjustment. Therefore, this Court is of the view that the view or finding expressed in the notice of proposal impugned in these writ petitions have to be treated only as a prima facie view expressed in notice of proposal and not as a final order made in respect of the claim made by the petitioner on the refund as well.

8. Therefore, these writ petitions are disposed of by directing both the parties to treat the impugned notice as only a notice of proposal without there being any final order passed in respect of the refund claim made by the petitioner or any adjustment made towards the same. Accordingly, the petitioner shall file the reply to the notice of proposal within a period of four weeks from the date of receipt of a copy of this order by raising all the objections. On receipt of such reply, the respondent shall pass orders on merits and in accordance with law within a period of four weeks. Personal hearing shall also be given to the petitioner before passing such order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

The Assistant commissioner (ST)(FAC)
Nandambakkam Assessment Circle,
Chennai.

+1cc to Mr.V.Srikanth, Advocate, S.R.No.87307
+1cc to the Government Pleader(Taxes, S.R.No.88026

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RGN(CO)

rrs 13/02/2019