IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.29601, 29605 & 29611 of 2018
& WMP.No.34566, 34573 & 34581 of 2018

M/s. Polymak Tools India Private Limited,
Represented by its Managing Director,
Mr.S.J.Mohammed ...Petitioner in All the WPs.

--Vs--

1.The Assistant Commissioner (ST)(FAC)
Kilpauk Assessment Circle,
F-50, (III Floor), First Avenue,
Anna Nagar East,
Chennai-600 102

2.The Commercial Tax Officer,
Group-VI, Enforcement (Central)
PAPJM Building,
Greams Road,
Chennai-600 006. ...Respondents in All the WPs.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, calling for the impugned proceedings of the first respondent in TIN 33341122728/2010-11 to 2012-13and quash the impugned order dated 12.10.2018 as passed contrary to the principles of natural justice and also contrary to 12.10.2018 as passed contrary to the principles of natural justice and also contrary to the judgment of the Hon'ble Madras High Court in the case of M/s.Jinsasan Distributor Vs. Commercial Tax Officer (CT) Chintaripet Asst. Circle Reported in 59 VST 256 affirmed by the Hon'ble Division Bench of the Madras High Court in the case of Assistant Commissioner (CT), Broadway Assessment Circle, Chennai Vs. Bhairav Trading Company reported in 96 VST 315.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr.G.Dhana Madhri
Government Advocate

ORDER

Three orders of assessment dated 12.10.2018, for the periods 2010-11 to 2012-13, passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') are impugned before me.

2. Heard Mr.P.Rajkumar, learned counsel for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate for the respondents.

3. The Assessing Authority has proposed to reverse input tax credit (ITC) on the basis that, upon a verification of Annexure-1 filed along with the monthly returns of the petitioner, revealed certain purchases from dealers whose registrations had been cancelled even prior to the transaction of purchase. Notices dated 30.08.2017 set out the details of such transactions in relation to which ITC was proposed to be reversed.

4. The petitioner responded on 24.01.2018, pointing out that as on the dates of transactions, the registrations of the selling dealers were very much current and a copy of the registration certificates and monthly returns of those dealers along with the Annexure-2, reflecting sales effected by those dealers, were also enclosed. A glance at Annexure-2 of the selling dealers also indicates that the name of the petitioner figured in the sale transactions. Notwithstanding the objections filed by the petitioner, along with the details noted aforesaid, the officer proceeds as per the pre-assessment proposals, reversing the ITC in the following terms:

> The dealer has effected purchases after date of Registration cancellation and therefore the objection on this issue is over-ruled and therefore the proposal is confirmed.

5. This sort of order indicates gross mis/non-application of mind on the part of the Assessing Officer. He has clearly not bothered to peruse the objections received, though the objections of the dealer dated 24.01.2018 are specifically referred to in reference 3 to the impugned order.

6. The learned Government Advocate makes a request that the matter may be remanded for consideration of the material already available. I am very reluctant to do so, since I am of the view that a second innings should not be afforded to the Department merely for the asking, particularly, in a matter of this nature where all materials have been filed by the petitioner and received by the Assessing Authority, but willfully ignored while completing the assessment.

7. However, in the interests of justice, I set aside the assessment orders, permitting the petitioner to appear before the Assessing Officer on Friday the 3rd of January, 2020 at 10.30 a.m without expecting any further notice in this regard. The Assessing Officer is directed to pass speaking orders de novo and in accordance with law for the periods in question i.e. 2010-11 to 2012-13, after hearing the petitioner and considering the materials already on record as well as anything further that the petitioner may file, within a period of four weeks from conclusion of personal hearing.

8. These writ petitions are allowed in the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (ST)(FAC)
Kilpauk Assessment Circle,
F-50, (III Floor), First Avenue,
Anna Nagar East,
Chennai-600 102

2.The Commercial Tax Officer,
Group-VI, Enforcement (Central)
PAPJM Building,
Greams Road,
Chennai-600 006.

+1 cc to M/s.P.Rajkumar,Advocate Sr.No. 104783
+1 cc to The Special Government Pleader(Taxes) Sr.No. 105445

AKM/20.12.19/3P-5C /

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