In the High Court of Judicature at Madras

Dated : 24.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

W P Nos.37353 & 37354 of 2016 &
WMP Nos.32004 & 32005 of 2016

Western Thomson India Limited
rep. by its Director .. Petitioner in both W.Ps.

Vs

The Assistant Commissioner (CT)
Kotturpuram Assessment Circle
Nok.46, Greenways Road
Chennai 600028.
.. Respondent in both W.Ps.

Writ Petitions filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified mandamus to call for the impugned proceedings of the respondent passed in TIN/33781602151/ 2011-12 & 2012-13 dated 30.09.2016 and quash the same, in so far as it relates to Reversal of Input Tax Credit amount of Rs.10,62,795/- and Rs.9,31,368/- respectively, relating to mis-match on the basis of "Web Report" and the consequential penalty u/s 27(4) amounting to Rs.11,44,190/- and Rs.12,79,694/- and further direct the respondent to redo the assessment on the above in accordance with law.

For Petitioner : Mr.N.Murali
(in both W.Ps.)

For Respondent : Mr.S.Kanmani Annamalai,
(in both W.Ps.) Additional Govt.Pleader

C O M M O N O R D E R

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Government Advocate accepts notice for the respondent. By consent, the Writ Petitions are taken up for final disposal.

2.The petitioner is a dealer in Automobile parts and registered as a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and Central Sales Tax Act, 1956 [CST Act]. The orders impugned in these Writ Petitions are orders of assessment under the provisions of the TNVAT Act for the years 2011-12 and 2012-13.

3.The impugned orders are challenged only with respect of the Reversal of Input Tax Credit,on the ground that 'mismatch of the annexures'. In respect of all other issues, the petitioner has paid the taxes.

4.The respondent issued a notice dated 09.03.2016, for both the years, stating that on verification during the surprise inspection on the business premises of the petitioner, it appears that there was difference between the turnover reported by the buyer in Annexure-I and the seller in Annnexure-II. Therefore, the respondent furnished the figures of the turnover and stated that the petitioner has claimed excess ITC and proposed to reverse the same.

5.The petitioner submitted their reply dated 6.6.2016, stating that the annexures generally state that the purchases made by the company as well as the report by the seller do not match, without furnishing full particulars and from the particulars/details furnished, the petitioner was able to trace the sellers name and address through the departmental website and submitted a detailed reply in tabulated form in respect of each item of alleged mismatch. The petitioner also placed reliance on the decisions of this Court in

(i) 50 VST 179(MAD)
[ALTHAF SHOES (P) LIMITED v. ASSISTANT COMMISSIONER (CT), VALLUVARKOTTAM]

(ii) 60 VST 283(Mad)
[SRI VINAYAGA AGENCIES v. ASSISTANT COMMISSIONER (CT), VADAPALANI]

(iii) W.P.No.9265 of 2013 dated 06.11.2014
(INFINITI WHOLESALE LIMITED v. ASSISTANT COMMISSIONER, KOYAMBEDU CIRCLE]

Thereafter, the petitioner has filed an additional reply on 25.08.2016, which pertains to the Industrial Input Certificates, of which we are concerned in this Writ Petition.

6.The respondent while completing the assessment in paragraph No.11, has dealt with 'mismatch' of the Annexures, stating that the petitioner has not reconciled the availment of 'mismatch' with due break-up together with copies of invoices and not provided enough documents before the Inspecting Officer in support of their claim for ITC. Hence, the proposal was confirmed.

7.First of all, the Assessing Officer could not have been solely guided by the Inspection Officer's report. Secondly, the petitioner has given details in the form of annexures, which runs to more than 150 pages. The Tabulated Statement gives the details and the relevant page numbers. The respondent did not consider any of those documents. Even assuming that certain documents are lacking, then the respondent ought to have issued a notice to the petitioner and called upon the petitioner to produce the relevant documents. However, in the instant case, though the petitioner sought for a personal hearing in their objections dated 06.06.2016, the same was not granted. In the para-wise comments given by the respondent to the learned Special Government Pleader vide letter dated 09.11.2016, the respondent has repeated the very same averments, as found in the impugned assessment orders, stating that no documentary evidence were filed.

8.This has been demonstrated to be factually wrong, as the petitioner has given documents and details in a compilation of 150 pages. However, this Court is not commenting upon the veracity of the documents. But, it is the duty of the Assessing Officer to consider those documents. Without considering the same, the respondent could not have rejected the petitioner's objections and what appears to have weighed in the mind of the Assessing Officer is the report of the Inspecting Officers.

9.For all the above reasons, the impugned orders are held to be unsustainable and passed without due application of mind. Therefore, the assessments with regard to the issue relating to 'mismatch' on the basis of the Web Report require to be redone.

10.Accordingly, the Writ Petitions are allowed, the impugned orders are quashed in so far as it relates to Reversal of the Input Tax Credit relating to 'mismatch' on the basis of the Web Report and the consequential penalty under section 27(4) of the Act and the respondent is directed to redo the assessments after affording an opportunity of personal hearing and peruse all the documents which were filed by the petitioner or which they may produce at the time of personal hearing. No costs. Consequently, the above WMPs are closed.

24.11.2016

rpa

To

The Assistant Commissioner (CT)
Kotturpuram Assessment Circle
Nok.46, Greenways Road
Chennai 600028.

T.S.SIVAGNANAM,J

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