IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.13328 to 13334 of 2015
and M.P.Nos.1 and 2 of 2015

M/s.Naveen Cotton Mill Pvt. Ltd.,
rep. By its Managing Director
R.Anand,
No.4/72, P.N.Road,
Tiruppur 641 602. ... Petitioner in all WPs

-Versus-

The Assistant Commissioner (CT) (FAC),
Lakshmi Nagar Circle,
Tiruppur 641 602. ...Respondent in all WPs

Prayer in W.P.No.13328 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to proceedings in TIN No.33172503665/2008-2009 dated 31.03.2015 and to quash the said proceedings and for a consequential direction to the respondent to redo the assessment to give reasonable opportunity to the petitioner to put forth his case.

Prayer in W.P.No.13329 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to proceedings in TIN No.33172503665/2009-2010 dated 31.03.2015 and to quash the said proceedings and for a consequential direction to the respondent to redo the assessment to give reasonable opportunity to the petitioner to put forth his case.

Prayer in W.P.No.13330 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to proceedings in TIN No.33172503665/2010-2011 dated 31.03.2015 and to quash the said proceedings and for a consequential direction to the respondent to redo the assessment to give reasonable opportunity to the petitioner to put forth his case.

Prayer in W.P.No.13331 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to proceedings in TIN No.33172503665/2011-2012 dated 31.03.2015 and to quash the said proceedings and for a consequential direction to the respondent to redo the assessment to give reasonable opportunity to the petitioner to put forth his case.

Prayer in W.P.No.13332 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to proceedings in TIN No.33172503665/2012-2013 dated 31.03.2015 and to quash the said proceedings and for a consequential direction to the respondent to redo the assessment to give reasonable opportunity to the petitioner to put forth his case.

Prayer in W.P.No.13333 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to proceedings in TIN No.33172503665/2013-2014 dated 31.03.2015 and to quash the said proceedings and for a consequential direction to the respondent to redo the assessment to give reasonable opportunity to the petitioner to put forth his case.

Prayer in W.P.No.13334 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to proceedings in TIN No.33172503665/2014-2015 dated 31.03.2015 and to quash the said proceedings and for a consequential direction to the respondent to redo the assessment to give reasonable opportunity to the petitioner to put forth his case.

For petitioner in all writ petitions : Mr.K.R.Krishnan

For respondents in all writ petitions : Mr.S.Manohar Sundaram, Addl. Govt. Pleader (Taxes)

COMMON ORDER

The petitioner in these writ petitions is one and the same with a common issue. Hence, all these writ petitions are taken up, heard together and disposed of by this common order.

2. In all these writ petitions, the petitioner challenges the impugned revised assessment orders relating to the assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively.

3. The case of the petitioner in brief is that it is a private limited company registered under The Companies Act and it is represented by its Managing Director. The petitioner is an assessee registered with the respondent under the provision of The Tamil Nadu Value Added Tax Act, 2006.

4. According to the petitioner, they have submitted necessary returns for the assessment years 2008-2009 to 2014-2015. While so, the officials from the Enforcement Wing inspected the place of business of the petitioner on 19.11.2014 to 21.11.2014 and

noticed certain defects. Thereafter, a notice came to be issued on 17.12.2014 individually proposing to revise the assessments in questions and inviting the objections of the petitioner. Accordingly, the petitioner submitted their objections on 05.01.2015. Having not satisfied with the objections, the respondent passed the impugned orders holding that the petitioner claimed excess ITC in respect of capital goods which are ineligible and ordered for reversal of ITC for the assessment years in question and levied penalty. Challenging those orders, the petitioner is now before this court with these writ petitions.

5. Heard both sides and also perused the records carefully.

6. For the pre-assessment notices dated 17.12.2014, the petitioner claims that they filed detailed objections dated 05.02.2015 individually [actually handed over to the respondent on 06.02.2015]. But, in the impugned orders, in one line, the respondent stated that the dealers had objected to the reversal, but not produced any material evidence.

7. A mere perusal of the objections dated 05.02.2015 will establish that each and every one of the issues had been dealt with. But, without considering the same, the impugned orders came to be passed. Thus, this court is of the view that the impugned orders relating to the assessment years in question are liable to be set aside and the matters are remitted back to the respondent for fresh consideration with certain conditions.

8. In the result, the writ petitions are allowed. The impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration and for passing orders after affording due opportunity to the petitioner. While passing such orders, the respondent shall take into consideration the objections of the petitioner dated 05.02.2015. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

kmk

Sub Asst. Registrar

To
The Assistant Commissioner (CT) (FAC), Lakshmi Nagar Circle,
Tiruppur 641 602.
+1 cc to Mr.K.R.Krishnan, Advocate, sr.44278
+1 cc to The Special Govt. Pleader (Taxes), sr.44305

Writ Petition
Nos.13328 to 13334 of 2015

vd(co) kra(4/9)