IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.13704 to 13709 of 2015

M/s Same Deutz-Fahr (India) Pvt.Ltd.,
rep.by its Joint General Manager
Finance - S.Tamilselvan
Plot No.72 M, Sipcot Industrial Complex
SIPCOT, Ranipet ...Petitioner in all the writ petitions

-vs-

1. The Assistant Commissioner (CT)
Ranipet (Sipcot)
Ranipet

2. The Appellate Deputy Commissioner (CT)
Vellore ...Respondents in all the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in his impugned Return Memos made in N.Dis.572/2015, 573/2015, 574/2015, 575/2015, 576/2015 & 577/2015 dated 01.04.2015, quash the same as illegal and contrary to the scheme of the Act and further direct the second respondent to entertain the appeal petitions and dispose of in accordance with law.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader

ORDER

These six writ petitions have been filed by M/s Same Deutz-Fahr (India) Private Limited represented by its Joint General Manager-Finance, SIPCOT, Ranipet challenging the impugned Return Memos made in N.Dis.572/2015, 573/2015, 574/2015, 575/2015, 576/2015 & 577/2015 dated 01.04.2015 by the Appellate Deputy Commissioner (CT), Vellore, to quash the same as illegal and contrary to the scheme of the Act with a further direction to the Appellate Deputy Commissioner (CT), Vellore to entertain the appeal petitions and dispose of the same in accordance with law on merits.

2. Learned counsel for the petitioner submitted that the petitioner, being a works contractor at Ranipet and an assessee on the file of the Assistant Commissioner (CT), Ranipet in TIN No.33694361899, were finally assessed on the total and taxable turnovers for the years 2008-09 to 2013-14 by the proceedings of the Assistant Commissioner (CT), Ranipet (Sipcot), Ranipet under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 on 10.12.2014. Aggrieved by the same, the petitioner preferred appeals before the Appellate Deputy Commissioner (CT), Vellore within time. It is also the claim of the petitioner that when 25% of the disputed tax amount were also paid within the time limit, the second respondent ought not to have returned the appeal petitions vide his memo dated 10.3.2015 for rectification of the defects. However, after due compliance of the defects, the appeal petitions were re-submitted on 18.3.2015. But, surprisingly, the second respondent has again returned the appeal petitions for the reasons that the rectified orders are not clear; that the turnover adopted in the original orders and in the rectified orders appear to be different, etc. Adding further, the learned counsel also submitted that on receipt of the return memos dated 23.3.2015, the petitioner's authorised representative offered his detailed explanation vide the letter dated 30.3.2015. In spite of the written explanation, the second respondent failed to note that the earlier orders passed by the first respondent on 31.7.2014 had been merged with the subsequent orders dated 10.12.2014, therefore, it should be construed that both the orders came to be passed under Section 27 of the Tamil Nadu Value Added Tax Act and that the petitioner is entitled to file appeals against such orders. On the other hand, the respondents have taken a stand that the orders challenged by the petitioners by way of appeals being passed under Section 84 are not appealable. In support of her submissions, the learned counsel has drawn the attention of the Court to the notice dated 11.7.2014 issued by the first respondent under Section 27(2) of the Tamil Nadu Value Added Tax Act calling upon the petitioner to file the objection, if any, within 15 days. Concluding her arguments, the learned counsel for the petitioner submitted that when the respondent has admittedly issued the notice for reversal of input tax credit under Section 27(2) calling upon the petitioner to file detailed objection, on receipt of the detailed reply from the petitioner, it is not open to the respondent to say that the petitioner has not suffered any order under Section 27(2), more

particularly, when the orders of reversal of input tax credit were passed.

3. Mr.Manoharan Sundaram, learned Additional Government Pleader taking notice on behalf of the respondents fairly submitted that the impugned return memos are not legally sustainable, as the orders of reversal of input tax credit are appealable.

4. No doubt, in the present cases, the petitioner was issued with the notice dated 11.7.2014 for reversal of input tax credit under Section 27(2) of the Tamil Nadu Value Added Tax Act. On receipt of the notice under Section 27(2) for reversal of input tax credit, the petitioner had also filed the reply dated 'Nil' received by the first respondent on 24.9.2014. But a perusal of the notice dated 11.7.2014 issued under Section 27(2) clearly shows that the first respondent had put the petitioner on notice for reversal of input tax credit. Therefore, even though the second respondent in the impugned return memos had mentioned that the assessing officer had passed only the orders of rectification under Section 84 and not the orders of revision under Section 27, as the orders of reversal of input tax credit had ultimately resulted, they have to be construed only as the orders passed under Section 27(2). Hence, this Court is of the considered view that the appeal petitions filed by the petitioner along with the deposit of 25% of the disputed tax for each of the assessment years are maintainable. Accordingly, the impugned return memos dated 1.4.2015 are set aside and the second respondent is directed to consider the appeal petitions on merit and pass appropriate orders in accordance with law. The writ petitions shall stand disposed of. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
Ranipet (Sipcot)
Ranipet

2. The Appellate Deputy Commissioner (CT)
   Vellore

+6cc's to M/s.R.Hemalatha, Advocate, S.R.No.27353
+1cc to the Special Government Pleader(Taxes), S.R.No.27414

W.P.Nos.13704 to 13709 of 2015

VSN(CO)
CA(22/07/2015)