IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T. RAJA

Writ Petition Nos.19100 & 19101 of 2015
M.P.Nos.1 & 1 of 2015

M/s.Dennis Steels Pvt. Ltd.,
rep., by its Managing Director,
Konath Jacob Dennis ... Petitioner in both W.Ps.,

Vs.

The Commercial Tax Officer,
Arakkonam Assessment Circle,
Arakkonam, Vellore District. ... Respondent in both W.Ps.,

Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, to call for the records of the impugned order of the respondent, in TIN 33834302070/2011-12 and TIN 33834302070/2012-13, dated 13.05.2015, quash the same, with the direction to redo the assessment, after providing an opportunity of being heard, along with their objections.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.V.Haribabu,
Addl. Govt. Pleader (Taxes)

O R D E R

There are two writ petitions, filed by M/s.Dennis Steels Pvt. Ltd., challenging the impugned orders, passed by the Commercial Tax Officer, Arakkonam Assessment Circle, Arakkonam, Vellore District, in TIN 33834302070/2011-12 and TIN 33834302070/2012-13, dated 13.05.2015, on the grounds that the respondent ought not to have reversed the Input Tax Credit (In short "ITC"), on the estimated invisible loss of raw material, as the petitioner has effected sales of the same. Admittedly, the raw materials purchased by the petitioner had been wholly consumed in a manufacturing operation, inside the State of Tamil Nadu.

2. Learned counsel for the petitioner submitted that in terms of Section 19(1) r/w. Section 19(2)(ii) of the TNVAT Act, the petitioner is entitled to Input Tax Credit (ITC), on the entire

amount of tax paid by him, on the purchases of raw-materials from the registered dealers, inside the State of Tamil Nadu. He further submitted that without there being a provision under the TNVAT Act, which requires reversal of ITC, consequent to burning loss of raw material, during and in the course of manufacture of TMT Bars, the respondent ought not to have reversed the Input Tax Credit (ITC).

3. Learned counsel for the petitioner further submitted that when the abovesaid issue has already been concluded in a batch of writ petitions in W.P.Nos.13901 of 2013, etc., dated 26.11.2014, holding clearly that the Assessing Officers are not justified in adopting uniform percentage, as invisible loss and calling upon the dealer, to reverse the ITC, availed to that extent, the respondent ought not to have passed the impugned order. In any event, if the ratio laid down by this Court in the aforementioned judgment, is applied, the impugned order has no leg to stand.

4. Concluding his argument, learned counsel for the petitioner also submitted that when the petitioner has repeatedly requesting the respondent-Assessing Officer, to provide a personal hearing, refusing his reasonable request and also violating the mandatory condition under Section 24(2) of the TNVAT Act, the respondent has erroneously imposed tax, by reversing ITC. Therefore, the impugned order is liable to be interfered with.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. A reading of the impugned order clearly shows that the petitioner has made a request to the respondent-Assessing Officer, to grant a personal hearing. But the respondent, without even considering his reasonable request for personal hearing, which is otherwise, mandatory as per Section 22(4) of the TNVAT Act, ought not to have proceeded to pass the impugned order.

7. That apart, one of the issues, raised by the petitioner, has also been covered by this Court in a batch of writ petitions in W.P.Nos.13901 of 2013, etc., dated 26.11.2014. When this Court has already decided one of the issues, it is not known, as to why, the respondent-Assessing Officer has hurriedly come to the conclusion, which is under challenge.

8. Be that as it may, this Court, keeping in view that the petitioner was not afforded with a reasonable opportunity to place his case, sets aside the impugned order, with a direction to the respondent to provide the petitioner, a personal hearing and after hearing the petitioner, it is for the respondent, to pass orders, on merits and in accordance with law, as expeditiously as possible.

9. With the above direction, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

skm

To

The Commercial Tax Officer,
Arakkonam Assessment Circle,
Arakkonam, Vellore District.

+1 cc to Mr.R.Kumar, Advocate sr.33399
+1 cc to Special Government Pleader Taxes sr33619

W.P.Nos.19100 and 19101 of 2015

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