

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.28349 of 2015
and M.P.No.1 of 2015

M/s.Ellak Chem Industries (P) Ltd.,
Represented by its Authorised
Signatory K.G.Jothis Kumar
Manjavadi Village,
Pappireddi Taluk,
Dharmapuri District.

... Petitioner

vs.

1. The Appellate Deputy Commissioner (CT),
Commercial Taxes Building, II Floor,
Picharts Road, Asthampatti,
Salem - 636 007.

2. The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District.

... Respondents

Prayer :- Writ petition filed under Article 226 of the constitution of India praying for a writ of certiorarified mandamus calling for the records on the files of the first respondent in Notice in ROC No.302/15A, dated 31.07.2015 and quash the same as being contrary to the order of this Court in W.P.No.7202 of 2015 dated 13.03.2015 and further direct the first respondent to entertain and pass orders on merits on the appeal Memorandum in Form X filed by the petitioner U/s 51 (1) of the TNVAT Act 2006.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.ANR Jayaprathap,
Govt. Advocate (Taxes)

O R D E R

This writ petition has been filed challenging the order passed by the first respondent for returning the appeal papers filed by the petitioner on the ground that the petitioner has not paid 25% of the disputed tax amount.

2. Mr.R.Senniappan, learned counsel appearing for the petitioner would submit that originally the petitioner approached this Court challenging the order passed by the second respondent with regard to the turn over fixed on adhoc basis. The second respondent adopted unilateral percentage as invisible loss and calling upon the petitioner for reversal of input tax credit availed to that extent. This Court, on 13.03.2015 in W.P.No.7202 of 2015 set aside a portion of the impugned order which has been issued based on unilateral percentage of invisible loss and as far as other portion of the impugned order is concerned, directed the second respondent to issue a show cause notice. The order passed by this Court in this regard in W.P.No.7202 of 2015 on 13.03.2015 is as follows -

"6. Taking note of the submissions made on either side and the fact that out of several issues raised by petitioner, only one issue is covered, this court allows this writ petition to that extent alone. With regard to the other issues, it is open to the petitioner to canvass the same before the statutory appellate authority. No costs. Consequently, connected Miscellaneous Petition is closed."

3. In view of allowing of the writ petition filed by the petitioner in W.P.No.7202 of 2015 on 13.03.2015, the first respondent cannot pass the impugned order or return the appeal papers, calling upon the petitioner to pay 25% of the difference of the tax assessed by the assessing authority. Therefore, the impugned order is hereby set aside and the matter is remanded to the first respondent with a direction to entertain the appeal and call upon the petitioner to pay the amount as per the order passed by this Court.

4. This writ petition is ordered accordingly. No costs.

-Sd/-

Assistant Registrar(cs-III)

//True copy//

Sub Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT),
Commercial Taxes Building, II Floor,
Picharts Road, Asthampatti,
Salem - 636 007.

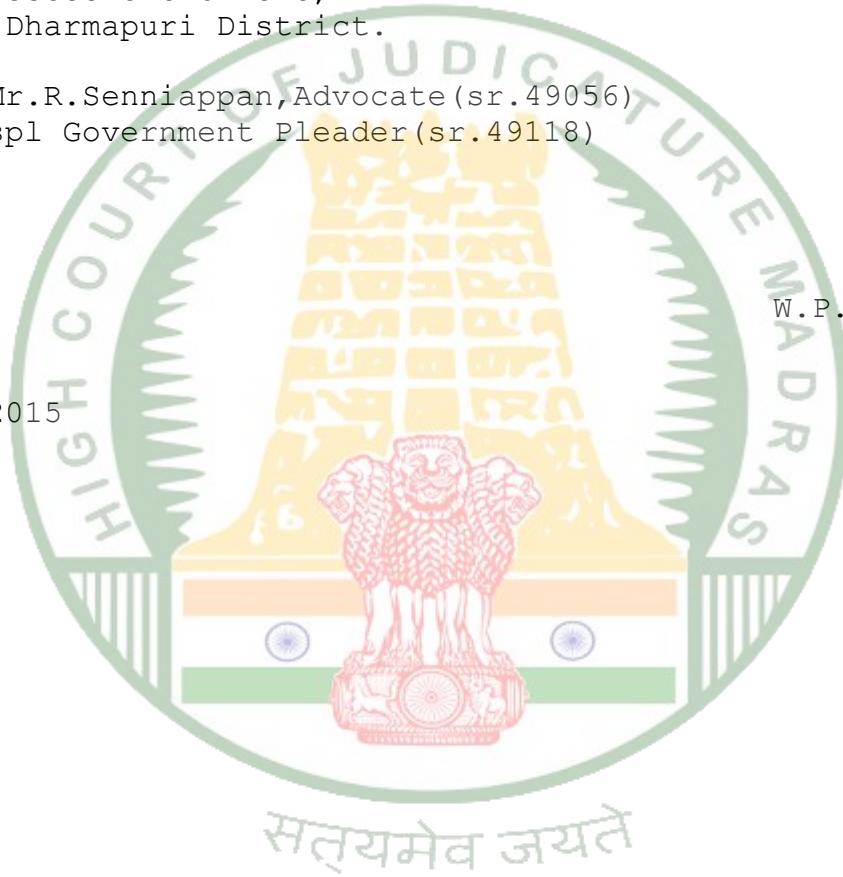
2. The Commercial Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District.

+1 cc to Mr.R.Senniappan, Advocate (sr.49056)

+1 cc to spl Government Pleader (sr.49118)

W.P.No.28349 of 2015

vsn(co)
cp 29/09/2015



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