IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3042 and 3043 of 2015
& M.P.Nos.1 and 2 of 2015 in each W.P.

M/s.Same Deutz Fahr India Pvt. Ltd.,
Represented by its
Joint General Manager (Finance),
No.72, M.Sipcot Industrial Complex,
Sipcot, Ranipet, Vellore. ... Petitioner in both the Writ Petitions

Vs.

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

2. The Appellate Deputy Commissioner (CT) Vellore,
Commercial Taxes Building,
Vellore.

... Respondents in both the Writ Petitions

Writ Petition No.3042 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN: 33694361899/2012-2013 and quash the impugned orders, dated 30.6.2014 and 13.10.2014 and further direct the first respondent to refund the tax of Rs.1,69,09,640/- paid by the petitioner on the purchase of goods.

Writ Petition No.3043 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN: 33694361899/2013-2014 and quash the impugned orders, dated 30.6.2014 and 13.10.2014 and further direct the first respondent to refund the tax of Rs.99,91,829/- paid by the petitioner on the purchase of goods.

For petitioner : Mr.P.Rajkumar

For respondents : Mr.Kanmani Annamalai, Addl.G.P.

ORDER

The prayer in Writ Petition No.3042 of 2015 is for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN: 33694361899/2012-2013 and quash the impugned orders, dated 30.6.2014 and 13.10.2014 and further direct the first respondent to refund the tax of Rs.1,69,09,640/- paid by the petitioner on the purchase of goods.

2. The prayer in Writ Petition No.3043 of 2015 is for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN: 33694361899/2013-2014 and quash the impugned orders, dated 30.6.2014 and 13.10.2014 and further direct the first respondent to refund the tax of Rs.99,91,829/- paid by the petitioner on the purchase of goods.

3. Mr.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondents.

4. Heard both sides.

5. In both these cases, the first respondent has originally passed orders on 30.6.2014 under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006 (for short, 'the TNVAT Act'), against which, the petitioner-Company preferred appeals. During the pendency of the appeals, nearly after three months from the date of the said original order, i.e. on 13.10.2014, Erratum had been issued in both the cases, stating that the orders had been passed under Section 19 of the TNVAT Act and the Section was stated to have been wrongly shown in the original order as Section 27(2) of the TNVAT Act.

6. It is the contention of the learned counsel for the petitioner-Company that in view of the Erratum issued, there is total non-application of mind by the authority, as the orders could not have been passed under Section 27(2) of the TNVAT Act and that no opportunity of hearing was given to the petitioner before the Erratum was issued.

7. Learned Additional Government Pleader appearing for the respondents, while refuting the contentions of the petitioner, fairly submitted that the Erratum was issued without giving an opportunity of hearing to the petitioner.

8. For better appreciation, it is useful to extract Sections 19 (1) and 27(2) of the TNVAT as follows:

> Section 19: Input tax credit: (1) There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule:
>
> Provided that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.
>
> Section 27: Assessment of escaped turnover and wrong availment of input tax credit:
>
> (2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of six years from the date of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:
>
> Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order."

9. Since the Erratum had been issued, the original orders dated 30.06.2014 will have to go, as it is an order passed under Section 27 (2) of the TNVAT Act. Whether the authority has got powers to pass order under Section 19 or not, is not for this Court to decide for the present.

10. In view of the submissions made by the petitioner-Company, both the orders, i.e. original orders dated 30.6.2014 and the Erratum, dated 13.10.2014, are set aside. The matter is remitted back to the first respondent-original authority to consider the case of the petitioner and pass appropriate orders afresh, after affording an opportunity of hearing to the petitioner. It is open for the petitioner to make further objections, if required and also submit necessary documents, if any in support of their contentions. The petitioner-Company shall appear before the authority concerned on 04.03.2015. In case the petitioner fails to appear on that day, it is open for the concerned authority to pass appropriate orders on merits and in accordance with law, recording the absence of the petitioner.

11. With the above observations and directions, the Writ Petitions are disposed of. No costs. The Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

cs

Copy to

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

2. The Appellate Deputy Commissioner (CT) Vellore,
   Commercial Taxes Building,
   Vellore.

+1cc to special government pleader(Taxes),
High court of Madras, SR.No.7125/15

+1cc to Mr.P.Rajkumar , Advocate SR.No.6896/15

W.P.Nos.3042 and 3043 of 2015

CA(co)
CA 24.2.15