IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2015

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THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.31858 to 31861 of 2015
and
M.P.Nos.1 of 2015

M/s. Best Cast I.T. Ltd.
rep. by its Director Murali Kabirdass
16 Poonamallee High Road
Maduravoyal Chennai-95 ... Petitioner in all WPs

Vs

The Assistant Commissioner (CT)
Koyambedu Assessment Circle
Market Management Committee Building
Koyambedu, Chennai-107 ... Respondent in all WPs

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the respondent in his proceedings in TIN 33621342570/2014-2015 dated 31.8.2015 (relating to the month September 2014, February 2015, November 2014 and December 2014 respectively) and quash the same as illegal

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.V.Haribabu,
Additional Government Pleader (T)

COMMON ORDER

Head the learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed challenging the orders of the respondent in his proceedings in TIN 33621342570/2014-2015 dated 31.8.2015 (relating to the month September 2014, February 2015, November 2014 and December 2014 respectively).

3. The petitioners, being the manufacturers and dealers in Automobile Parts and Electrical Transformers, are registered dealers under the TNVAT and CST Acts and are assessee on the file of the respondent herein. The petitioners are involved in the activity of manufacture of motor vehicle parts like brake assembly and electrical transformers. The petitioner purchases the raw materials like Aluminum Ingots and scraps as inputs from registered dealers within the State of Tamil Nadu on payment of tax under the TNVAT Act. Such tax suffered inputs are used by the petitioner in the manufacture of final product i.e., automobile parts and electrical transformers and such manufactured goods are sold by the petitioner within the State of Tamil Nadu as a local sale and on interstate sale basis to dealers in other state.

4. The respondent issued notices dated 17.11.2014 stating that the petitioner has not reversed the ITC as mandated by the amendment made under Section 19(2) of the TNVAT Act, in respect of sale made under Section 8(1) of the Act. The respondent has further stated that the petitioners have made sales to unregistered dealers in other state during the months in issue. The respondent adopted the formula and proposed to reverse the ITC, for which, the petitioner, by their replies dated 02.12.2014 explained to the respondent. However, without considering the same, the impugned orders were passed stating that no objection to the notices issued. Hence, the petitioner is before this Court.

5. According to the learned counsel for the petitioner, the respondent had wrongly chosen to pass the impugned orders reversing the input tax credit even before the closure of the assessment years in question as if the impugned assessment orders passed under the provisions of the Tamil Nadu Value Added Tax Act and that the respondent has no authority to reverse the input tax credit for the months in question. The impugned orders passed are against the decision of this Court reported in 28 STC 537 and 79 STC 429, wherein it has been held that there cannot be provisional assessment after completion of assessment year. That apart, according to him, in similar

circumstances, this Court in W.P.No.14343 of 2014, vide order dated 05.06.2014 has set aside the impugned order therein and remitted the matter back to the authority for passing fresh orders.

6. The learned Additional Government Pleader (Taxes) would fairly submit that the matters may be remitted back to the respondent as the impugned orders have not been passed in respect of the whole year.

7. Admittedly, the respondent has not passed the impugned assessment order for the whole year and the same were passed only in respect of certain months. Therefore, the impugned orders are against the decisions of this Court in K.Purushothaman vs. The State of Tamil Nadu Rep. by the Secretary to Government, Commercial Taxes and Religious Endowments Department, Chennai (W.P.No.18415 of 2003 dated 06.10.2003) following the earlier decisions of the Division Bench of this Court in State of Tamil Nadu vs. Wander Limited reported in 1990 (vol.79) STC 421 Madras and Mahendrakumar Ishwarlal & Co. vs. Deputy Commercial Tax Officer reported in 1971 (Vol.28) STC 551, Madras and also the above referred Judgment of this Court dated 05.06.2014.

8. In view of the same, the impugned orders dated 31.08.2015 are set aside and the matters are remitted back to the respondent, who is directed to pass regular assessment order in respect of the whole year, since the assessment year itself is over, after providing sufficient opportunity to the petitioner.

The writ petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Koyambedu Assessment Circle
Market Management Committee Building
Koyambedu, Chennai-107

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.54690
+1cc to the Special Government Pleader(Taxes), S.R.No.55380

W.P.Nos.31858 to 31861 of 2015

KSJ(CO)
CA(29/10/2015)