IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

Writ Petition Nos.8117 to 8121 of 2015 and
M.P.Nos.1 of 2015 (5 Mps) in
W.P.Nos.8117 to 8121 of 2015

Tvl.Thirumalai Chemicals Limited,
Represented by its Chief Financial
Controller/Authorised Signatory,
N.Nambi Rajan,
No.25A, Sipcot Industrial Compex,
Ranipet, Vellore. .. Petitioner in All W.Ps

v.

The Assistant Commissioner (CT),
Ranipet (SIPCOT) Assessment Circle,
No.17 MF Road,
Navalpur, Ranipet,
Vellore District. .. Respondent in all W.Ps

W.P.No.8117 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed in TIN No.33274360093/2007-2008, dated 05.03.2015, on the file of the respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to pass orders in accordance with law after giving opportunity to the petitioner to cross examine all the vendors of the petitioner.

W.P.No.8118 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed in TIN No.33274360093/2008-2009, dated 05.03.2015, on the file of the respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to pass orders in accordance with law after giving opportunity to the petitioner to cross examine all the vendors of the petitioner.

W.P.No.8119 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed in TIN No.33274360093/2009-2010, dated 05.03.2015, on the file of the respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to pass orders in accordance with law after giving opportunity to the petitioner to cross examine all the vendors of the petitioner.

W.P.No.8120 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed in TIN No.33274360093/2010-2011, dated 05.03.2015, on the file of the respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to pass orders in accordance with law after giving opportunity to the petitioner to cross examine all the vendors of the petitioner.

W.P.No.8121 of 2015:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed in TIN No.33274360093/2011-2012, dated 05.03.2015, on the file of the respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to pass orders in accordance with law after giving opportunity to the petitioner to cross examine all the vendors of the petitioner.

For Petitioner in all W.Ps : Mr.A.Thiyagarajan, Senior Counsel for Mr.S.Ramesh Kumar

For Respondent in all W.Ps : Mr.A.N.R.Jayaprathap Government Advocate (T)

COMMON ORDER

By consent of the learned counsel on either side, the writ petitions are taken up for hearing and disposed of by this common order.

2.Heard Mr.A.Thiyagarajan, learned Senior Counsel appearing for the petitioner and Mr.A.N.R.Jayaprathap, learned Government Advocate (T) takes notice for the respondent.

3.The petitioner has filed the above writ petitions seeking to issue a writ of certiorarified mandamus, calling for the records pertaining to the impugned orders passed in TIN No.33274360093/2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 respectively dated 05.03.2015, on the file of the respondent and to quash the same as illegal, arbitrary and against the principles of natural justice and to direct the respondent to pass orders in accordance with law after giving opportunity to the petitioner to cross examine all his vendors.

4.It is the case of the petitioner that it is a Dealer in Chemicals and assessed to tax under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and Central Sales Tax Act, 1956 (CST Act). On 13.02.2015, the respondent issued notices to the petitioner without any reference to any provision of law or disclosing report based on the alleged cross verification of “e” returns filed by the sellers of the petitioner found in the Internet Website of the Department. The respondent has alleged in the notices that the petitioner effected purchases from those Dealers during the years 2007 to 2012. Therefore, the respondent issued notices dated 13.02.2015 proposing to disallow the respective ITC claim for the said year and proposed to levy penalty/interest.

5.According to the petitioner, the notices issued on 13.02.2015 are against the provisions of Section 22(4) of the TNVAT Act. On 19.02.2015, the petitioner filed its objections to the said notices and submitted that ITC relating to the purchases effected from the various registered Dealers and quoted the same in their monthly returns. The petitioner requested the respondent to conduct a proper enquiry relating to the respective assessment orders of the vendors in their respective assessment circle and give an opportunity to cross examine the sellers in order to establish the true facts. Further, according to the petitioner, the respondent without giving any opportunity for cross examination of the vendors and without any cross verification of the assessment orders passed against the vendors of the petitioner, passed the impugned orders. The petitioner also contended that the enquiry report was not served on them. Since, the notices were issued only on 13.02.2015, the same are against the provisions of Section 22(4) of the TNVAT Act.

6.Mr.A.Thiyagarajan, learned Senior Counsel appearing for the petitioner would submit that in similar circumstances, this Court set aside the order passed by the respondent in W.P.No.9265 of 2013 dated 06.11.2014 and in the judgement reported in 2013 (60) VST 283 (Mad) Sri Vinayaga Agencies v. Assistant Commissioner (CT) (Mad). Since, the ratio laid down in those judgements squarely applies to the facts and circumstances of the present case, Mr.A.N.R.Jayaprathap, learned Government Advocate (T) appearing for the respondent submitted that the impugned orders may be set aside and the matters may be remitted back to the respondent for fresh consideration with a direction to the respondent to pass fresh orders after taking into consideration the above referred judgements.

7.Having regard to the submissions made by the learned counsel on either side, the impugned orders in TIN No.33274360093/2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 respectively dated 05.03.2015 passed by the respondent in all these writ petitions are set aside and the matters are remanded back to the respondent for fresh consideration and the respondent shall decide the issue afresh after giving an opportunity to the petitioner's authorised representatives and pass fresh orders after taking into consideration the judgements referred to above.

8.With these observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

The Assistant Commissioner (CT),
Ranipet (SIPCOT) Assessment Circle,
No.17 MF Road,
Navalpur, Ranipet,
Vellore District.

5 cc to Mr. S.Ramehkumar,Advocate, SR.No.16193
1 cc to Spl.Government Pleader,Sr.No16408

W.P.Nos.8117 to 8121 of 2015

sk(co)
pmk.30.3.2015