IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. Nos.8584,8585 and 8586 of 2015

M/s. Larsen & Toubro Ltd
Chennai Regional Office
TC1 building, 2nd floor
979, Mount Poonamallee road
Manapakkam, Chennai-600 089
rep by its Assistant Manager
(Corporate Indirect Taxes) .. Petitioner in all cases

Vs.

The Deputy Commissioner (CT) II
Large Tax Payer Unit
(LTU) Marshall Road,
Chennai-600 008 ... Respondent in all the cases

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the impugned order of re-assessment in TNGST 0620015/2004-05,2005-06 and 2006-07 and dated 18.02.2015 from the files of the respondent herein and quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondent : Mr.Kanmani Annamalai, AGP(T)

COMMON ORDER

Petitioner has come forward with the aforesaid prayer.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondents.

3. The petitioner is a company incorporated under the Companies Act, 1956 and carries different king of business activities. The manufacturing works are located in various states from where the manufactured goods are either directly supplied to customers or same used for own purpose. The petitioner reported a total and taxable turnovers for the Tamil Nadu General Sales Tax Act, 1959(hereinafter referred to as the "TNGST Act") assessment years 2004-05, 2005-06 and 2006-07. The respondent issued pre-assessment notice under Section 12 of the TNGST Act requesting the petitioner to submit the documents with regard to claim of exemption on second sales, freight and unloading charges sub-contractors turnover and labour charges. The petitioner submitted the details and documents for claim of exemption on second sales and deduction of freight and unloading charges and sub-contractors

turnover from the taxable turnover. By assessment order in 0620015 the respondent considered all the documents filed by the petitioner and allowed the claim exemption. The respondent again issued pre-revision notice dated 07.04.2014 proposing to disallow the claim of deduction on RMC freight and pumping charges for the said assessment years. The petitioner filed a detailed reply dated 13.05.2014. However, the respondent did not pass any order on the basis of the objections dated 13.05.2014 and issued a common pre-revision notice dated 05.02.2015 for assessment years 2004-05,2005-06,2006-07 giving five days to file objections and also stated that opportunity of personal hearing would be granted within a period of five days. The petitioner filed a common reply dated 12.02.2015 reiterating the objections. The respondent passed order of re-assessment in TNGST 0620015/2004-05,2005-06,2006-07 dated 18.02.2015 disallowed the exemption granted to the petitioner.

4. Learned counsel for the petitioner submitted that the respondent while passing the impugned order of re-assessment has failed to take into consideration the fact that even after adjustment of the tax payable on the latest returns viz for the month of February 2015, there is an excess ITC of Rs.36,27,53,333/- on which the respondent has not passed any refund or adjustment order and also relied on the Section 19 (17) of the Tamil Nadu Value Added Tax Act, 2006 wherein it has stated as follows:

> "19.(17)
> If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer."

5. The learned counsel for the petitioner submitted that pursuant to the notice issued by the respondent, the petitioner raised objection and sought time to attend the personal hearing and requested the respondent to grant personal hearing to explain with some more documents for the assessment years 2004-05, 2005-06 and 2006-07. Without considering the reply made, the respondent passed the impugned order dated 18.02.2015 asking him to pay the taxes along with penalty. Hence, if an opportunity is given to the petitioner, they would be able to convince the respondent. The learned counsel for the petitioner further submitted that the petitioner is also agreed to pay 10% of the tax amount as determined in the impugned order dated 18.02.2015 and if three weeks time is given, they would co-operate to enable the assessing officer to complete the proceedings afresh.

6. Taking note of the facts and circumstances of the case, I direct the respondent to accept 10% of the tax amount as determined in the impugned order for the assessment years 2004-05, 2005-06 and 2006-07 which the petitioner has agreed to pay the same. If there is excess ITC lying with the respondent the same

can be adjusted towards future years. One more opportunity is given to the petitioner to putforth their objections and thereafter, the respondent shall pass appropriate orders on merits and in accordance with law.

7. The petitioner is directed to appear on 30.04.2015 before the respondent, on which date, the petitioner is entitled to make their verbal and written submissions, if any. In case the petitioner fails to avail this opportunity, the respondent is empowered to pass orders afresh on merits and in accordance with law based on the available records. If there is any excess amount with the department that need not be refunded and may be adjusted towards future years.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner (CT) II
Large Tax Payer Unit
(LTU) Marshall Road,
Chennai-600 008.

1 cc to Spl.Government Pleader(T),Sr.No17052

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pmk.22.4.2015