IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.04.2016

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THE HONOURABLE MR.JUSTICE M. DURAISWAMY

W.P. Nos.24802 to 24804 of 2014
& 28159 to 28161 of 2014
and M.P. Nos.1 to 1 of 2014

M/s.N.G.A. Steels Private Ltd.
rep. by its Managing Director
N.Anbalaghan ... Petitioner in WP.Nos.24802 to 24804/14

TVL. Agni Steels (P) Ltd.
rep by its Director
Mr.M. Chinnasami ...Petitioner in W.P.28159 to 28161/14

-vs-

1.The Assistant Commissioner (CT),
Sankari Assessment Circle,
Sankari, Salem district.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005. ... Respondents in WPs 24802 to 24804/14

The Assistant Commissioner (CT)
Erode (Rural) Circle
Erode

The Principal Secretary/ Commissioner of
Commercial Taxes
Ezhilagam, Chepauk
Chennai-5 ...Respondents in W.P. 28159 to 28161/14

Prayer in W.P.24802/14 and 28159/14:Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the files of the second respondent herein in VAT Cell/Roc.No./37188/2011 (Circular No.22/2011) dated 20.10.2011 and quash the same in so far as the petitioner is concerned.

W.P. 24803 /14 and W.P.24804 of 2013 Petition filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the records on the file of the 1st respondent in TIN.No.33233222984/2013-14 dated 28.8.2014 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice

Prayer in W.P.28160 and 28161 of 2014:- Petition filed under Article 226 of the constitution of India Calling for the records on the files of the first respondent in TIN No. 33882900829/2013-14 dated 28.7.2014 and 30.9.2014 and quash the same as being without jurisdiction and authority of law and further direct the first respondent to pass order afresh in accordance with the direction of this Honourable Court rendered under identical circumstances in W.P. Nos.10661 and 10662/2014 dated 11.4.2014 (Sonal Vyapar Ltd. Vs. Assistant Commissioner (CT) Suramangalam Assessment Circle Salem).

For Petitioner : Mr.R.Senniappan

For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

COMMON ORDER

The petitioners have filed the above writ petitions to issue writs of certiorari and certiorarified mandamus to call for the records on the files of the second respondent in VAT Cell/Roc.No.37188/2011 (Circular No.22/2011) dated 20.10.2011 and quash the same in so far as the petitioners herein are concerned, calling for the records on the files of the first respondent in TIN.Nos.33233222984/2012-13 and 2013-14 dated 28.08.2014 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and calling for the records on the files of the first respondent in TIN.Nos.33882900829/2012-13 and 2013-14 dated 28.02.2014, 28.07.2014 and 30.09.2014 and quash the same as being without jurisdiction and authority of law and further direct the first respondent to pass orders afresh in accordance with the direction of this Court rendered under identical circumstances in W.P. Nos.10661 and 10662/2014 dated 11.04.2014 (Sonal Vyapar Ltd. vs. Assistant Commissioner (CT) Surmangalam Assessment Circle, Salem).

2.It is the case of the petitioners that the petitioners are the private companies registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioners are manufacturers of TMT/HSD Bars and they have effected local purchases of M.S.Ingots, billets, coal, stores and consumables and refractory bricks from the registered dealers. They have branches in other states. The first respondent has passed self assessment orders by accepting the monthly returns filed by the petitioners, mentioning in the writ petitions. Thereafter, the first respondent has issued revision notices, proposing to make reversal of input tax credit for the reasons that the petitioners have not reversed the input tax credit in respect of the goods dispatched on stock transfers to its branches situated in the other States and on the goods dispatched on consignment stock transfers to its agent in other states. On receipt of the said revision notices, the petitioners filed the detailed replies/objections, stating that they have maintained separate production and stock accounts for the finished products manufactured from locally purchased raw materials. Therefore, the petitioners requested the first respondent to drop the proposal of making reversal of input tax credit by considering the objections filed by them. The first respondent, without considering the petitioners' objections, passed the impugned orders, confirming the proposals made in the revision notices. Aggrieved by the same, the petitioners have filed the above writ petitions seeking for the prayer, as stated supra.

3.Mr.R.Senniappan, learned counsel appearing for the petitioners submitted that there are two major issues involved in the writ petitions i.e. one related to proposal to reverse input tax credit on the estimated percentage value of raw materials called as “Invisible Loss” and the other one related to reversal of ITC in respect of consignment transfer and stock transfer. He would further submit that in respect of the first issue involved in the writ petitions, in identical matters, this Court in W.P. Nos.10661 and 10662 of 2014, by order dated 11.04.2014, set aside the impugned orders and allowed the writ petitions. Following the said order, this Court also in W.P. No.7691 of 2015, by order dated 18.03.2015, set aside the impugned order and allowed the writ petition. In respect of the second issue involved in the writ petitions, in an identical matter, this Court in the judgment reported in (2015) 81 VST 389 (Mad) Interfit Techno Products Ltd. vs. Principal Secretary/Commissioner of Commercial Taxes and another, disposed of the batch of writ petitions, granting liberty to the Assessing Officer.

4.Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents submitted that the issue involved in the present writ petitions are covered by the decisions relied upon by the learned counsel appearing for the petitioners.

5.Having regard to the submissions made by the learned counsel on either side and also following the orders passed in W.P. Nos.10661 and 10662 of 2014 and in W.P. No.7691 of 2015 and the judgment reported in (2015) 81 VST 389 (Mad) Interfit Techno Products Ltd. vs. Principal Secretary/ Commissioner of Commercial Taxes and another, the impugned orders are set aside and the matters are remitted back to the first respondent, who shall pass fresh orders independently, in accordance with law, by considering the objections as well as the documents relating to the separate production and stock accounts maintained for the manufacture of finished products by using the raw materials purchased from local as also from outside the State, produced by the petitioner. The

Assessing Officer is directed to inspect the place of business and ascertain actual loss incurred in the business and pass the order of assessment. The writ petitions are disposed of. No costs. Consequently, connected M.Ps are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vga

To

1.The Assistant Commissioner (CT),
Sankari Assessment Circle,
Sankari, Salem district.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

3. The Assistant Commissioner (CT)
Erode Circle
Erode

1 cc to Spl.Government Pleader (Taxes), Sr. 23714

W.P. Nos.24802 to 24804 of 2014
& 28159 to 28161 of 2014

MSM (CO)
kk 3/5