IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:25.07.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.15690 to 15694 of 2014
and M.P.Nos.1 to 1 of 2014

Ponneri Steel Industries,
Represented by its partner,
Mr.Manmohan Agarwal,
120/2B & 121,GNT Road, Pervallur,
Chinnambedu, Thiruvellore District. .. Petitioner in all WPs.

Vs.

The Assistant Commissioner (CT)
Ponneri Assessment Circle,
Ponneri - 601 204. .. Respondent in all WPs.

Prayer:Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in TIN 33271700450/2006-07 dated 05.05.2014; TIN 33271700450/2007-08 dated 05.05.2014; TIN 33271700450/2008-09 dated 05.05.2014; TIN 33271700450/2009-10 dated 05.05.2014; and TIN 33271700450/2010-11 dated 05.05.2014 respectively and quash in respect of reversal of input tax credit on burning loss estimated.

For Petitioner : Mr.R.Kumar
in all WPs
For Respondent : Mr.Manokaran Sundaram
in all Wps Additional Government Pleader

COMMON ORDER

Heard Mr.R.Kumar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader accepts notice on behalf of the respondent. With the consent of the learned counsel on either side, these Writ Petitions are taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In these writ petitions, the petitioner has challenged the orders of assessment for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011. The only common issue which arises for consideration in all these writ petitions is with regard to burning loss. It is submitted by the learned counsel for the petitioner that the said issue is covered by a decision of this Court in the case of M/s.Dennis Steels Private Limited V. The Commercial Tax Officer, Arakkonam Assessment Circle, Arakkonam, Vellore District in W.P.No.6966 of 2016. In the said case, identical issue arose for consideration as to how such a loss should be computed and at this stage, it would be useful to refer to the operative portion of the order, which reads as follows:

> "10. With regard to the first issue, inspite of the earlier direction issued by this Court (referred supra), once again the Assessing Officer has committed an error by adopting an Adhoc percentage. The Assessing Officer has not made any endeavor to ascertain as to whether the representation made by the dealer is justifiable or not. The Assessing Officer did not embark a fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which the tax was paid vis-a-vis the goods manufactured from and out of the goods purchased. No endeavor was made in this regard. Therefore, this Court has to necessarily interfere with the said finding with regard to the invisible loss in the process of manufacture which has now been fixed by the Assessing Officer at 4%. Therefore, the said question is decided in favour of the petitioner and the finding is set aside.
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> 11. So far as the second issue regarding the usage of Furnace Oil as fuel, the same has been decided against the petitioner by referring to the decision of the Haryana Tax Tribunal. It is pointed out by the learned counsel appearing for the petitioner that the description of the product as per Schedule E of the Haryana Value Added Tax Act, which reads out the goods which are eligible for ITC, the description of goods is petroleum products and the circumstances in which Input Tax shall be nil is when used as a fuel. It is submitted that there is a difference between the entries in schedule A of Haryana Value Added Tax Act and the description of goods as per serial no.67 of the first schedule to Tamil Nadu Value Added Tax Act, which describes industrial inputs which includes consumables. Therefore, it is the case of the petitioner that the Furnace Oil is a consumable.

12. That apart, it is pointed out that Annexure 12 has only recently being amended and given effect to from 29.01.2016 which refers to inputs damaged during intermediary stage of manufacture and this entry was not there prior to 29.01.2016. Hence, these issues have to be considered by the respondent and the reliance placed on the decision of the Haryana Tax Tribunal is misconceived, as it will not apply to the facts and circumstances of the present case. Accordingly, the finding rendered with regard to the reversal of ITC on purchase of Furnace Oil used as fuel is set aside.

13. The next issue is with regard to the reversal of ITC towards inter-state sales without C forms. It is seen that as against the said issue, the petitioner had filed a revision petition in R.P.No.51/2015 before the Joint Commissioner (CT), Vellore Division and the matter was disposed of only on 03.05.2016. Though the revision petition has been dismissed, the Assessing Officer has been directed to pass year wise order under Section 27(2) of the TNVAT Act. Therefore, the reversal of ITC towards inter-state sales without C forms, determined at Rs.1,11,706/- is set aside with a direction to the Assessing Officer to comply with the direction issued by the revisional authority viz., the Joint Commissioner (CT), Vellore Division in his order dated 03.05.2016 made in R.P.No.51/2015.

14. In the light of the above discussions, the Writ Petition is allowed and the matter pertaining to the issue nos.1 and 2 viz., ''Invisible loss in the process of manufacture'' and ''Reversal of ITC on purchase of Furnace Oil used as fuel'' are remitted back to the respondent for fresh consideration, with a direction to the respondent to conduct an inspection of the petitioner's factory, get himself acquainted with the manufacturing process, then consider the objections placed by the petitioner and thereafter, take a decision in accordance with law. With regard to the reversal of ITC towards interstate sales without C forms, the respondent is directed to comply with the order passed by the Joint Commissioner (CT), Vellore Division in his order dated 03.05.2016 made in R.P.No.51/2015. Consequently, connected miscellaneous petition is closed. No costs."

3.Further, it has to be pointed out that a notification has been issued by the Government in G.O.(Ms).No.18, Commercial Taxes and Registration (B1) Department, dated 29.01.2016, by which, in Annexure 12 which gives the Schedule for Reversal of Input Tax Credit. Clause 12 has been inserted which deals with 'Inputs destroyed in fire or lost - Section 19(9)(ii)' and Clause 13 deals with 'Inputs damaged during intermediary stage of manufacture - Section 19(9)(iii)'. In the instant cases, the respondent has made ad hoc assessments, which have to be held to be bad in law.

4.In the light of the above, these Writ Petitions are allowed and the impugned orders are set aside and the respondent is directed to redo the assessments, by conducting an inspection on the petitioner's factory and getting himself acquainted with the manufacturing process, then consider the objections placed by the petitioner and thereafter, take a decision in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

sgl

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Ponneri Assessment Circle,
Ponneri - 601 204.

+ 1 cc to Spl.Govt.Pleader SR 42005
+1 CC to Mr.R.Kumar, Advocate SR NO 42267[19/9/16]

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