IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.30998 & 32913 of 2015
and
M.P.Nos.1 and 2 of 2015 (2 in each case)

Exide Industries Ltd.,
Industries Division,
No.103 - A, Nelson Manickam Road,
Chennai - 600 029.
rep. by its Authorized Signatory B.Baskar
...Petitioner in both W.Ps.

Vs.

1. The Deputy Commissioner,
(Commercial Taxes)
LTU - I, Assessment Circle,
Marshall Road,
Egmore, Chennai 600 008.

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

3. The Government of Tamil Nadu,
rep. by its Principal Secretary,
Department of Commercial Taxes & Registration,
Fort St. George, Chennai - 600 009.
...Respondents in both W.Ps.

Prayer in W.P.No.30998 of 2015

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records, pertaining to the issue of the order, dated 04.08.2015, in proceeding bearing TIN No.33220640025/2013-14, claiming ITC reversal at Rs.61,74,978.00 and conclusive portion, as to directing the recovery of the same for the year 2013-14, under TNVAT Act, 2006 from the petitioner Company by the The Deputy Commissioner, (Commercial Taxes) LTU - I, Assessment Circle, Marshall Road, Egmore, Chennai 600 008, the first respondent herein, and quash the same.

Prayer in W.P.No.32913 of 2015

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records, pertaining to the issue of the order, dated 04.08.2015, in proceedings, bearing TIN No.33220640025/2014-15, claiming ITC reversal at Rs.19713018.40 and consequential direction, directing the recovery of the same for the year 2014-15, under TNVAT Act, 2006 from the petitioner Company by the The Deputy Commissioner, (Commercial Taxes) LTU - I, Assessment Circle, Marshall Road, Egmore, Chennai 600 008, the first respondent herein, and quash the same.

For Petitioner : Mr.D.Ashok Kumar

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Heard Mr.D.Ashok Kumar, learned counsel appearing for the petitioner, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, for respondents. Since the parties herein and the relief sought for in these Writ Petition are one and the same, these Writ Petitions are taken up together and disposed of by this common order.

2. The petitioner is a registered dealer, on the file of the first respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'the TNVAT Act'). In these Writ Petitions, the petitioner has challenged the assessment orders passed by the first respondent/Deputy Commissioner (CT) for the years 2013-14 and 2014-15.

3. The first respondent issued pre revision notices, dated 05.06.2015, stating that, on scrutiny of the monthly returns of the petitioner, it is revealed that the petitioner have made interstate sales against Form-C at 2%, but they have not made input tax credit (ITC) reversal under Section 19 (2) (v) of the TNVAT Act.

4. The petitioner, in response to the above notices, submitted replies, stating that amendment under Section 19 (2) (v) of the Act is clear that it covers the goods falling under Section 19 (2) (v) relating to goods used for trading purpose in the course of interstate commerce and trade, and that, VAT purchases by the petitioner's Factory falls under Section 19(2) (v), which is used as input, in manufacturing of goods in the State of Tamil Nadu. Therefore, the petitioner stated that the figures adopted in pre revision notices does not fall under Section 19 (2) (v) of the Act, and as per the existing

provisions of the amendment, the ITC reversal workings as made in the pre revision notices are not applicable to the petitioner. Further, the petitioner placed reliance on the order passed by this Court, in the case of (Lucas Tvt. Ltd., Vs. State of Tamil Nadu) in W.P.No.6403 of 2014, dated 03.03.2014.

5. The first respondent, while completing the assessments, though made certain observations on the merits of the contentions raised by the petitioner, brushed aside the order passed by this Court in the above referred case, by stating that, it is only a remand order.

6. The Authority ought to have seen that as to what was the purpose of the remand, and merely because, it was an order, remanding the matter for fresh consideration, it does not mean that, it cannot be relied upon.

7. In the light of the above, the Writ Petitions are allowed, the impugned orders are set aside, and the matter is remanded to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sd
To

1. The Deputy Commissioner,
(Commercial Taxes)
LTU - I, Assessment Circle,
Marshall Road,
Egmore, Chennai 600 008.

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

3. The Government of Tamil Nadu,
rep. by its Principal Secretary,
Department of Commercial Taxes & Registration,
Fort St. George, Chennai - 600 009.

+1 cc to Special Government Pleader Taxes sr 50298

Writ Petition No.30998 & 32913 of 2015

aa15/09/2016