IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.6.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.21886 to 21890 of 2016

and WMP.Nos.18722 to 18731 of 2016

M/s.Fresh Papers India Pvt.Ltd.,rep.
by its Director Mr.Ravindra Nahar ...Petitioner in
Chennai-52 all WPs

Vs

The Assistant Commissioner (CT),
Madhavaram Assessment Circle,G.N.T.Road
Chennai-66. ...Respondent in
all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent respectively in (i) TIN.No.33631086824/2010-11 dated 27.4.2016, (ii) TIN.No.33631086824/2011-12 dated 28.4.2016, (iii) TIN.No. 33631086824/2012-13 dated 28.4.2016, (iv) TIN.No.33631086824/2013-14, dated 29.4.2016 and (v) TIN.No.33631086824/2014-15 dated 29.4.2016, quash the same as illegal and against the principle of natural justice and further direct the respondent to furnish the copy of documents sought for by the petitioner and thereafter pass the order in accordance with law.

For Petitioner : Ms.C.Rekha Kumari
For Respondent : Mr.S.Manohar Sundaram,
Additional Government Pleader

COMMON ORDER

Mr.S.Manohar Sundaram, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioner is a company incorporated under the provisions of the Companies Act and registered under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the

Act) and the Central Sales Tax Act, 1956. They are engaged in the business of cutting and slitting of jumbo rolls of tissue papers into paper napkins, serviettes, tissue rolls, towels, facial tissues, etc. An inspection was conducted by the officials of the Enforcement Wing in the business premises of the petitioner on 24.9.2014, pursuant to which, certain defects were pointed out and they formed the basis for the issuance of revision notices for the five assessment years namely from 2010-11 to 2014-15.

3. In the revision notices, several issues were pointed out as defects and the Assessing Officer proposed to assess the escaped assessment in terms of Section 27 of the Act. It appears that for all the five assessment years, there were totally seven issues. So far as the fourth issue is concerned with regard to reversal of the input tax credit under Section 19(16) of the Act on the ground that the petitioner had not furnished purchase invoices with reference to Annexure I filed for the relevant assessment year for cross verification of the correctness of the input tax credit claim, it is submitted that the petitioner, while giving their objections to the revision notices dated 17.7.2015, stated as follows :

> "Fifthly, you have also proposed to reverse ITC of Rs.1,15,232/- on the ground that we have lodged excess claim of ITC of Rs,1,15,232/-. We state that before making such an adverse allegation in the notice under reply, you ought to have furnished the details of Annexure II of our seller. We have huge purchase from various dealers and you should have made specific reference of all those details in the notice under reply. In the absence of any specific details of invoice number, date, name of the sellers and sale value, it is difficult for us to give any concrete reply on this issue. We reserve our right to file detailed reply after the receipt of details sought for by us. We also request you to furnish the copies of Annexure II filed by our sellers and the copies of sale invoices issued by them to establish our claim with the documentary evidences available at our end. We hope that our request would be considered in judicious manner by providing us sufficient opportunity and compliance of principle of natural justice."

4. From the above, it is seen that a request was made by the petitioner that too, to furnish copies of invoice numbers, dates, names of the sellers, sale value and that as and when those details are furnished, the petitioner undertook to file a detailed reply. However, while completing the assessment, the respondent, with regard to this issue, did not assign any reasons, but only confirmed the proposal to reverse the input tax credit merely by observing that the petitioner has not furnished their purchase invoices with reference to Annexure I filed for the relevant assessment year for cross verification of the correctness of the claim of input tax credit.

5. The respondent ought to have considered the petitioner's request and furnished the details so as to afford an opportunity to the petitioner to put forth their submissions. However, this, having not been done, would amount to violation of the principles of natural justice. Therefore, this Court is of the view that the said issue requires to be reconsidered by the Assessing Officer.

6. With regard to other issues, the learned counsel for the petitioner submits that if 15 days' time is granted, the petitioner will be able to produce balance sheets and furnish all the details.

7. Since those issues involve disputed questions of fact, the petitioner has to necessarily exhaust the remedies available under the Act either by filing a petition for review under Section 84 of the Act or by filing an appeal before the Appellate Authority.

8. In view of the above, the writ petitions are partly allowed, the impugned orders rendered by the Assessing Officer with regard to issue No.4 as to the reversal of input tax credit on a differential purchase turnover, are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to furnish all the details sought for by the petitioner with reference to invoice numbers, dates, names of the sellers and sale value, within a period of three weeks from the date of receipt of a copy of this order. On receipt of such details, the petitioner is granted two weeks' time to submit their objections. Thereafter, the respondent shall afford an opportunity of personal hearing to the petitioner and proceed to complete the assessment. With regard to all other issues, which are dealt with by the Assessing Officer in the impugned orders, it is open to the

petitioner to resort to remedies available under the Act. No costs. Consequently, the above WMPs are closed.

-s/d-
Assistant Registrar(CSIII)

True Copy
Sub-Assistant Registrar

To
The Assistant Commissioner (CT),
Madhavaram Assessment Circle,
Chennai-66.

+1 cc to Mr.C.Rekha kumari Advocate sr.35730
+1 cc to Special Government Pleader(T) sr.35929

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MPl(co)
aa11/07/2016