IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.7246 to 7249 of 2015
and M.P.Nos.1 to 1 of 2015

M/s.Marutham Steel Rolling Mills [P] Ltd.,
Rep. by M.Veerappan,
Director .. Petitioner in all WPs

Vs

The Assistant Commissioner [CT] [FAC],
Pollachi [Rural]. .. Respondent in all WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records on the file of the respondent herein in TIN:33102283853/2010-2011, 33102283853/2011-2012, 33102283853/2012-2013 and 33102283853/2013-2014 respectively, dated 27.01.2015 and to quash the same.

For Petitioner in all WPs	:	Mr.N.Prasad
For Respondent in all WPs	:	Mr.K.Venkatesh, GA

COMMON ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner; Mr.K.Venkatesh, learned Government Advocate accepts notice on behalf of the respondent. With the consent of either side, the writ petitions are taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 [hereinafter referred to as "the Act"] and the Central Sales Act, 1956. The petitioner is a manufacturer of TMT bars. The case of the petitioner is that TMT bars are manufactured from MS billets, which are procured by the petitioner locally as well as on interstate sale basis. The billets, which are procured locally, are used in the manufacture of TMT bars and sold in the state of Tamil Nadu. In respect of billets, purchased as interstate purchases, they are used in the manufacture of TMT bars and stock transferred outside the state.

3. An inspection was conducted in the place of business of the petitioner, which resulted in the issuance of pre-revision notices, in respect of the Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14. Broadly, there were four issues pointed out in the pre-revision notices. Firstly, with

regard to the reversal of input tax credit under Section 19[4] of the Act. The second issue pertains to the details gathered from the website of the Department, stating that the details do not match with the petitioner's returns and therefore, sought to be disallowed. The third issue was pertaining to sales suppression, which was also based on the details gathered from the website. The fourth issue, which arose only for the Assessment Year 2013-14 [impugned in W.P.No.7249 of 2015], pertains to stock variation. On a careful reading of the impugned order, in respect of all the Assessment Years, it is evidently clear that the Assessing Officer was swayed away by the report submitted by the inspection officer.

4. Time and again, this Court has pointed out that the Assessing Officer is an independent superior authority and cannot be solely guided, by the Enforcement Officer's report. In the considered view of this Court, the report of the inspection officer, can at best be a starting point for issuance of show cause notice. A notice having been issued by the Assessing Officer and after a reply is submitted by the dealer, the Assessing Officer has to consider the objection in an objective manner.

5. It may not be necessary for this Court, to go into each of the findings, on each issue, for each Assessment Year and suffice to note, few

findings recorded by the Assessing Officer. In fact, on going through the same, it is seen that the Assessing Officer, while considering the petitioner's request for furnishing details gathered from the website, a finding has been rendered that the petitioner wants to drag on the matter by insisting for copies of the bills. This finding is incorrect, because, unless and until the petitioner, is confronted with proper material, they will not be in a position to submit an effective reply.

6. On the contrary, if the show cause notice is bereft of particulars, then, obviously, the dealer cannot be correctly dealt with and proper rate of tax cannot be recovered. This aspect was not taken into consideration, by the Assessing Officer. With regard to the short reversal of the input tax credit, the Assessing Officer had stated that the same has been noticed, even at the time of inspection and it has been incorrectly worked out in the notice [Assessment Year for 2010-11]. This finding is incorrect, because, what was recorded at the time of inspection, cannot be a sole reason for confirming the proposal, without considering the petitioner's objection.

7. With regard to the Assessment Year 2012-13, on receipt of the show cause notices, the petitioner submitted a reply stating that there is an excess reversal. However, while completing the assessment, by order dated

27.01.2015, the Assessing Officer has given, entirely a different finding, stating that all raw materials were one and the same in its nature and they were totally utilised, in the process of manufacturing goods, at a time for saving electricity, labour cost, etc. The petitioner stated that, if this issue has been properly pointed out in the show cause notices, i.e., pertaining to the volume of the local purchases, the petitioner would have also submitted that there was unutilised locally purchased billets and the TMT bars manufactured out of locally purchased billets were remaining unsold.

8. There has not been an objective analysis of the reply, filed by the petitioner to the show cause notices. Apart from that, for the Assessment Year 2013-14, there is an equal time addition. The respondent did not consider the explanation given by the petitioner, vide explanation dated 25.11.2014, with regard to the stock variation. The only contention raised by the petitioner is that, there is no justification for addition towards probable omission. In this regard, the petitioner placed reliance on the decision of this Court reported in *46 BST 565*.

9. However, while completing the assessment, vide order dated 27.01.2015, the respondent had merely referred to certain decisions of this Court and confirmed the proposal. Thus, considering the entire facts and

circumstances of the case, this Court is convinced that the assessment proceedings had to be re-done for all the Assessment Years, after objectively considering the petitioner's objections. This is so because that there are serious errors committed in the decision making process and the procedure adopted is flawed.

10. Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration, who shall at the outset, furnish the details gathered from the website to enable the petitioner to submit an additional explanation. It is also open to the petitioner to submit further explanation, with regard to the finding rendered, in respect of the Assessment Years 2013-14, on the issue relating to stock difference and after receipt of the explanations, the respondent shall afford an opportunity of personal hearing and re-do the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.11.2016

gya

To
The Assistant Commissioner [CT] [FAC],
Pollachi [Rural].

T.S.SIVAGNANAM, J.

gya

WP.Nos.7246 to 7249 of 2015
and M.P.Nos.1 to 1 of 2015

07.11.2016