IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23075 of 2016
&
W.M.P.No.19765 of 2016

M/s.Chennai United Metal Industries Pvt. Ltd.,
Rep. by its Director Jitendra Kumar Goel,
Sur No.1002, 1019, Sirupuzhalpettai,
K.S.Road, Gummidipoondi-601 201. ... Petitioner

Versus

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
No.38, 2nd Floor, Ganapathy Theatre Complex,
G.N.T.Road, Gummidipoondi-601 201. ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in CST.1125216/2014-15, dated 09.05.2016 and quash the same as illegal and without jurisdiction and authority of law and direct the respondent not to reverse the claim of ITC in the absence of any claim of ITC on interstate purchase used in manufacturing.

For Petitioner : Mr.T.Pramodkumar Chopda

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

O R D E R

Heard Mr.T.Pramodkumar Chopda, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as "TNVAT Act") and Central Sales Tax Act, 1956 (hereinafter referred as "CST Act"), has filed this Writ Petition, challenging the order of

assessment passed under the CST Act, for the year 2014-15, dated 09.05.2016.

3. Two grounds have been raised by the petitioner. Firstly, though in the pre-revision notice dated 06.08.2015, the respondent proposed to reverse the ITC, he did not specifically state that the reversal has to be done under the provisions of the TNVAT Act. But, while completing the assessment, after receiving the "C" forms produced by the petitioner, the reversal has been done under the CST Act, which is impermissible in law. Further, it is submitted that if the reversal had to take place under the provisions of TNVAT Act, then an opportunity of personal hearing ought to have been granted to the petitioner.

4. In the counter affidavit filed by the respondent, more particularly, in paragraph No.10, the respondent is justifying his action by contending that in terms of Section 9(2) of CST Act, all the provisions of the TNVAT Act, relating to the assessment, re-assessment, collection and enforcement of payment of tax shall apply to CST Act, which includes the power to reverse the ITC under Section 19(2)(v) and 19(5)(c) of TNVAT Act. Therefore, the respondent would justify the impugned order.

5. One important point which has been lost sight of by the respondent is that Section 9 deals with levy and collection of tax and penalties which is in effect enabling provision and sub-section 2 states that the authorities exercising power under the State law will be entitled to exercise the power under the CST Act. However, that does not mean that the reversal should take place under the CST Act, but the reversal of ITC can be done only under the provisions of the TNVAT Act, since the concept of Input Tax Credit is alien to the CST Act. Thus, the error which has crept in the impugned order is on the account of the fact that while issuing the pre-revision notice, it has not been clearly spelt out as to which provision of law, the respondent proposes to reverse the ITC. Partially, the petitioner also has to be blamed because, the petitioner did not give objections, but only produced certain "C" forms. That apart, if the respondent had accepted few "C" forms and sought to not extend the benefit of concessional rate of tax in respect of certain transactions for non-production of "C" forms and ultimately resulting in reversal of Input Tax Credit, the respondent should have issued show-cause notice.

6. Hence, for all the above reasons, the Assessment Proceedings have to be re-done in accordance with law. Accordingly, the Writ Petition is allowed and the impugned order is set-aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed

to file their detailed objections within a period of 15 days form the date of receipt of a copy of this order and also produce copies of the records which they rely upon and on receipt of the objections, the respondent shall afford an opportunity of personal hearing, verify all the records, including stock registers and thereafter, redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

r n s

To

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
No.38, 2nd Floor, Ganapathy Theatre Complex,
G.N.T.Road, Gummidipoondi-601 201.

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.62320
+1cc to the Special Government Pleader(T), S.R.No.62664

W.P.No.23075 of 2016
&
W.M.P.No.19765 of 2016

KJI(CO)
CA(28/11/2016)