IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26098 & 26099 of 2016 &

W.M.P.Nos.22376 to 22378 of 2016

M/s Alkraft Thermo Technologies Pvt. Ltd.
Rep. by its General Manager-Finance Mr.P.Sirajudeen
.. Petitioner in both W.Ps.

Vs

The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle
No.127, 2nd Floor, Yadhaval Street,
Padi, Chennai 600050.
.. Respondent in both W.Ps.

Prayer in W.P.No.26098 of 2016: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified mandamus to call for the records of the respondent's Impugned Order dated 18.03.2016, bearing reference CST/651756/2012-13 and to quash the same and further direct the respondent to pass a revised assessment order for the Assessment year CST 2012-13 based on the representation dated 12.07.2016.

Prayer in W.P.No.26099 of 2016: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent's Impugned Demand Notice dated 12.07.2016, bearing reference CST/651756/2012-13 and to quash the same.

For Petitioner : Mr.C.Saravanan

For Respondent : Mr.S.Manokaran Sundaram
Addl.Govt.Pleader

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COMMON ORDER

Heard Mr.C.Saravanan, learned Counsel appearing for the petitioner and Mr.S.Manokaran Sundaram, learned Additional Government Pleader accepting notice on behalf of the respondent and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

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2.The petitioner is a manufacturer and dealer of Aluminium Radiators, Inter Coolers, and Oil Coolers, and registered dealer under the provisions of Tamil Nadu Value Added Tax, 2006 [TNVAT Act] and Central Sales Tax Act, 1956 [CST Act]. The petitioner has filed W.P.No.26098 of 2016, for quashing the order of assessment passed by the respondent dated 18.03.2016 and to direct the respondent to pass a revised assessment order for the assessment year 2012-13. The petitioner has filed W.P.No.26099 of 2016, challenging the consequential Demand Notice dated 12.07.2016.

3.The legal issues which arises for consideration in this case, is (i) as to whether the respondent could have rejected the defective 'C' Forms without returning the same to the petitioner for rectification and re-presentation ? and (ii) whether the respondent ***foreclosed from passing a revised order** The answer to both the questions should be in the negative and the Assessing Officer has committed an error in the manner in which the assessment has been completed.

4.It is the settled legal position that if the 'C' Forms submitted by the dealer are defective in nature, it should be returned to the dealer to enable him to re-present the same, after rectifying the defects and that procedure has not been adopted in the instant case. With regard to the second issue that in terms of Section 9(2) of the Act, sufficient power is granted to the Assessing Officer to revise the assessment, because the Assessing Authority is empowered to assess, re-assess, collect and enforce payment of tax and the procedure stipulated under the TN VAT Act, is made applicable to the proceedings under the CST Act. ***Therefore, the respondent should have acceded to the request made by the petitioner to pass a revised assessment order and consider the same on merits.**

5.In the light of the above, the following order is passed:

(i) W.P.No.26098 of 2016, is allowed, the impugned order is quashed and the matter is remanded to the respondent for fresh consideration, who shall return the defective 'C' Forms to the petitioner to enable them to rectify the defects and re-present the same ***and also pass a revised order of assessment as stated above** and proceed in accordance with law, and

(ii) In the light of the order passed in W.P.No.26098 of 2016, quashing the assessment order and remanding the same for fresh consideration, the Demand Notice dated 12.07.2016, cannot be enforced. Accordingly, W.P.No.***26099** of 2016 is allowed and the impugned Demand Notice dated 12.07.2016 is set aside.

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(iii) No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CSVI)
Dt.12.7.16

***Modified as per court order dt.31.8.16**
in WMP.No.25461/16 by TSSJ
sd/-
Assistant Registrar
Dt.12.8.16

True Copy

Sub-Assistant Registrar

To

***To be substituted to the order already despatched on 1.8.16**

+1 cc to Mr.C.Saravanan Advocate
sr.***49327**
+1 cc to Special Government Pleader
sr.***49500**

W.P.Nos.26098 & 26099 of 2016

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