IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.32843 & 32844/2016
&
WMP.Nos.28388 to 28390/2016

M/s.Alkraft Thermo Technologies Pvt.Ltd.,
Rep by its Senior Executive (Accounts),
Mr.M.Sadasivam,
35-A&B/1, Ambattur Industrial Estate,
Chennai - 600 058. ...Petitioner in both WPs

Versus

The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
No.127, 2nd Floor, Yadhaval Street,
Padi,Chennai - 600 050. ...Respondents in both WPs

Prayer in WP.No.32843/2016:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus calling for the records of the impugned order dated 25.07.2016 for the assessment year CST/651756/2014-15 and quash the same and consequently direct the respondent to pass a revised assessment order for the assessment year CST/2014-15 based on the petitioner representation dated 09.09.2016.

Prayer in WP.No.32844/2016:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of respondent Impugned Demand Notice dated 06.09.2016 bearing reference CST/651756/2014-15 and quash the same.

For Petitioner in both WPs : Mr.C.Saravanan

For Respondent in both Wps : Mr.K.Venkatesh,GA (Taxes)

COMMON ORDER

Heard Mr.C.Saravanan, learned counsel for the petitioner ; and Mr.K.Venkatesh, learned Government Advocate (Taxes) appearing for the respondent; and with their consent, the writ petitions are taken up for final disposal.

2 The petitioner is a manufacturer and dealer of Aluminum Radiators, Inter Coolers and Oil Coolers and registered with the Respondent Department under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter called as TNVAT ACt) and Central Sales Tax Act, 1956 (hereinafter called CST Act). The assessment under the CST for the year 2014-15 was completed vide order dated 25.07.2016 for total turnover of Rs.50,22,74,137/-. The turnover which was covered by C-Forms were assessed at the rate of 2%, not covered by C-Forms and F-Forms were assessed at the rate of 14.5% and the assessment order also demanded tax for the defective C-Forms.

3 The petitioner submitted a representation which was considered by the respondent and the tax liability was reduced and the taxable turnover was determined vide order dated 25.07.2016. In the meantime, the petitioner received C-Forms and F-Forms and approached the respondent to accept the same and to redo the assessment. However, this was refused to be accepted by order dated 25.07.2016.

4 The petitioner challenged the assessment order of similar nature relating to the Assessment Year 2013-14 by filing a writ petition in W.P.No.29595 of 2016. The said writ petition was allowed by order dated 30.08.2012 by setting aside the order of the first assessment dated 25.07.2016 and remanded the case for fresh consideration.

5 While on remand, the respondent accepted the C-Forms and revised the assessment. However, with regard to the sales return and cash discounts, the respondent refused to consider the same as there was no specific direction to the said effect in the earlier writ petition. Therefore, the petitioner

has approached this Court challenging the order of revised assessment dated 25.07.2016.

6 It may be true that in the earlier writ petition No.29595 of 2016, the Court passed order dated 30.08.2012, whereby the matter was remanded to the respondent for fresh consideration and the petitioner was directed to produce C-Forms, F-Forms and the Export Turnover and the authority was directed to decide the matter afresh. However, the Assessing Authority, being a statutory authority, would also have the power to redo the assessment, moreso, when the Court directed to redo the matter. Thus, if the petitioner has made a statement with regard to the sales return and cash discount and produced the necessary documents, it is always open to the assessing officer to take into consideration those documents and take a decision in the matter. Therefore, the respondent need not restrict himself only with regard to the C-Forms and F-Forms and if the petitioner is legally entitled for any other relief then that may be considered.

7 Accordingly, the Writ Petition in WP.No.32843/2016 is allowed and the impugned order, insofar as it has rejected the petitioner's case relating to Sales Return, Cash Discount and return of stock transferred goods are concerned, are set aside and the respondent is directed to redo the assessment on these heads afresh, after affording an opportunity of personal hearing to the petitioner. No costs.

8 In the light of the above order, the consequential Demand Notice dated 06.09.2016 which is the subject matter of challenge in WP.No.32844/2016 stands set aside and the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

AP

To

The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
No.127, 2nd Floor, Yadhaval Street,
Padi,Chennai - 600 050.

1 CC to Mr.C.Saravanan, Advocate, SR. 53079

1 CC to Spl.Government Pleader (Taxes), SR 53333

WP.Nos.32843 & 32844/2016

AK (CO)
PSI 05/10/2016