IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.09.2016
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.P.Nos.33109 to 33113 of 2016
and
WMP.Nos.28594 to 28598 of 2016

M/s.Star Auto Works,
Rep by its Proprietor Mr S M Basha
No.205, East Coast Road,
Pudupattinam,
Kalpakkam-603 102.

.. Petitioner in all the writ petitions

Versus

The Assistant Commissioner (CT)
Thirukazhukundram Assessment Circle,
No.42, Walajah Nagar,
Thirukazhukundram.

.. Respondent in all the writ petitions

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in TIN/33881601999/2009-10, TIN/33881601999/2010-11, TIN/33881601999/2011-12, TIN/33881601999/2012-13 and TIN/33881601999/2013-14 dated 12/11/2015 and 24/2/2016 respectively and quash the same.

For Petitioner in all the Writ petitions : Mr.V.Sundareswaran
For Respondent in all the writ petitions : Mr.K.Venkatesh Government Advocate(Taxes)

COMMON ORDER

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.K.Venkatesh, Government Advocate(Taxes), who accepts notice on behalf of the respondent and with the consent on either side, these writ petitions are taken up for final disposal.

2 The petitioner who is a registered dealer on the file of the respondent, has filed these writ petitions challenging the orders passed by the Assessing Officer in the

application filed by the petitioner under section 84 of the Tamil Nadu Value Added Tax Act, 2006. Earlier, the petitioner came before this Court for the very same Assessment Years in WP.Nos.24620 to 24624/2015 to set aside the assessment orders for the relevant Assessment Years and to direct the Assessing Officer to consider the returns and Annexures filed by the petitioner and apply his mind independently in the light of the statutory provisions and the ratio laid down by this Court and this Court, taking note of the fact that the petitioner has filed an application u/s.84 of the Act, directed the respondent / Assessing Officer to consider the same.

3 Pursuant to the same, a notice for personal hearing was issued by the respondent on 05.10.2015 and fixing the date of personal hearing on 13.10.2015. It is not in dispute that the petitioner availed the opportunity and produced all the invoices for verification. The petitioner's grievance is that the revision of assessment was done solely based upon the verificiation of the Annexure-II of the other end dealer. This according to the petitioner, cannot be done in the light of the decision of this Court in Infiniti Wholesale Limited V. Assistant Commissioner, [CT], Koyambedu Assessment Circle, Koyambedu, Chennai reported in [2015] 82 VST 457 [Mad].

4 The petitioner's further contention is that if there is any discrepancy found when the petitioner produced the invoices and other documents to prove that payments were effected through proper banking channels for the purchases done by them, then, if the Assessing Officer proposes to disbelieve the stand of the petitioner solely based on the Annexure-II of the other end dealer which cannot be done in terms of the decision of Infiniti Wholesale Limited [cited supra], there should have been an endeavour by the Assessing Officer to verify the returns and books of accounts of the other end dealer and merely because the Department Website reflects a different data in respect of the other end dealer, which is based upon their return, the ITC could not have been reversed. For the Assessment Years which are the subject matter for consideration in these writ petitions, it is seen that substantial amount of transactions which have been done by the petitioner have been accepted by the Assessing Officer and only in respect of few transactions, namely about ten transactions per Assessment Year has been doubted. Even in respect of those transactions, except for one or two transactions, the ineligible ITC is not to the full extent, but only a portion of ITC claimed by the petitioner. Therefore, the authority should have the endeavour to call for details of the other end dealer and their books of accounts as well as their returns and then make an assessment as to what would be the correct amount of ITC that could be availed by the petitioner. However, such exercise was not done by the

authority, resulting in an erroneous order though not fully but partially.

5 Accordingly, the writ petitions are partly allowed and the findings rendered by the Assessing Officer in respect of the denila of ITC solely based upon the transactions reflected in the returns of the other end dealer, stand set aside and the matter is remanded to the respondent for fresh consideration, who shall issue notice to the petitioner as well as to the other end dealer, verify the books of accounts and then, come to the conclusion as to what would be the appropriate ITC that could be availed by the petitioner. In other respects the impugned orders, being in favour of the petitioner, is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AP

To
The Assistant Commissioner (CT)
Thirukazhukundram Assessment Circle,
No.42, Walajah Nagar,
Thirukazhukundram.

+1 cc to M/s.V.Sundareswaran Advocate sr 53685/16

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aa18/10/2016