IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.7073 to 7081 of 2017

Indus Mobile Distribution Pvt.Ltd.,
Represented by its Director
Mr.C.Sivanandam
No.281, T.T.K.Road, Alwarpet,
Chennai - 600 018. ... Petitioner for all W.Ps

Vs.

1. The Assistant Commissioner (CT),
Alwarpet Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

2. The Appellate Deputy Commissioner (CT)(East)
C.T. Building Annexe, Third Floor,
Greams Road,
Chennai - 600 006. ...Respondents in all the W.Ps

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the Second Respondent-herein in N.Dis.722/2016/A dated 23.01.2017 and quash the same, while directing the Second Respondent to admit the appeal filed by the petitioner against the proceedings of the First Respondent in TIN.No.33260762126/2006 - 07, TIN. No. 33260762126/2007 - 08, TIN. No. 33260762126/2008 - 09, TIN. No. 33260762126 / 2009 - 10, TIN. No.33260762126/2010 - 11, TIN. No. 33260762126/2011 - 12, TIN. No. 33260762126/2013 - 14, TIN. No. 33260762126/2012 - 13, TIN. No. 33260762126/2014 - 15 respectively dated 30.06.2016.

For Petitioner in all WPs : Mr.N.Inbarajan

For Respondents in all WPs : Mr.K.Venkatesh, Government Advocate

COMMON ORDER

All these writ petitions are filed challenging the order of the 2nd respondent dated 23.01.2017 wherein and whereby the appeals filed by the petitioner were returned as not entertainable by stating that the petitioner has not paid the balance of 25% of the disputed tax in every case till the date of passing the impugned order.

2. Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

3. The petitioner is a registered dealer and orders of assessment were passed against the petitioner in respect of the assessment years 2006-2007 to 2014-2015. Challenging the said orders of assessment, the petitioner preferred appeals before the 2nd respondent/ Appellate Authority. Those appeals were returned by the Appellate Authority by passing the impugned orders in these writ petitions on the reason as stated supra.

4. The main contention of the petitioner is that the 2nd respondent has mechanically passed the impugned orders without applying his mind to the certificate already issued by the 1st respondent/ Assessing Authority on 19.08.2016 stating that the entire tax due for the assessment orders 2006-2007 to 2014-2015, totally a sum of Rs.4,40,36,376/-, has been adjusted from the excess Input Tax Credit amount available to the petitioner as per their request made through letter dated 02.07.2016. Therefore, it it is contended by the petitioner that the 2nd respondent ought to have entertained the appeals and considered the same on its own merits and in accordance with law as there is no occasion for complying with the proviso 2 to Section 51(1) of the Tamil Nadu VAT Act, 2006. Learned counsel for the petitioner, in support of the above said contention invited this Court's attention to the certificate issued by the 1st respondent on 17.08.2016.

5. Learned Government Advocate, based on the instruction, submitted that it is true that such certificate was issued by the 1st respondent adjusting the entire tax liability of the petitioner in respect of those assessment years. Therefore, the learned Government Advocate fairly submitted that the matter may be remitted back to the 2nd respondent for considering the appeals on its own merits and in accordance with law.

6. As rightly pointed out by the learned counsel for the petitioner and accepted by the learned Government Advocate, the certificate issued by the 1st respondent on 19.08.2016 clearly

indicates that the entire tax liability for those assessment years has been adjusted from the excess ITC amount available to the petitioner. Therefore, there cannot be any impediment for the Appellate Authority to consider the appeals on its own merits and in accordance with law.

7. Considering all these aspects, all the writ petitions are allowed and the impugned orders are set aside. Consequently, the petitioner is directed to represent the appeals before the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the appeals, the 2nd respondent shall consider those appeals and pass orders on the same on merits and in accordance with law, after giving due opportunity of hearing to the petitioner, within a period of eight weeks thereafter. It is made clear that this Court is not expressing any view on the merits of the assessment as it is for the 2nd respondent/Appellate Authority to consider and decide as stated supra. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Assistant Commissioner (CT),
   Alwarpet Assessment Circle,
   No.46, Greenways Road,
   Chennai - 600 028.

2. The Appellate Deputy Commissioner (CT)(East)
   C.T. Building Annexe, Third Floor,
   Greams Road,
   Chennai - 600 006.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.19528
+1cc to the Special Government Pleader(T), S.R.No.19753

W.P.No.7073 to 7081 of 2017

KJ(CO)
CA(11/04/2017)