In the High Court of Judicature at Madras

Dated : 07.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.22414 to 22416 of 2017
& WMP.Nos.23507 to 23509 of 2017

Accudyne Industries India (P) Ltd.,
rep.by its Finance Controller
Thiru K.J.Sridhar ...Petitioner in all Writ Petitions

Vs

The Assistant Commissioner (CT)
Chengalpattu Assessment Circle,
No.16-A, I Floor, I Main Road,
Anna Nagar, Chengalpattu-1. ...Respondent in all Writ Petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the file of the respondent herein in TIN : 33040901830/2013-14, 33040901830/2014-15 and 33040901830/2015-16 dated 04.7.2017 and quash the same.

For Petitioner : Mr.N.Prasad
For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. In these writ petitions, the petitioner is aggrieved by the orders of assessment under the State Act for the years 2013-14, 2014-15 and 2015-16.

3. The petitioner is not aggrieved by the orders in their entirety, but only with regard to five issues, which have been decided against the petitioner. The five issues are as hereunder :

"1. Wrong claim of input tax credit
2. Discrepancy in Form WW

3. Defective certificates issued by buyers of capital goods
4. Service income and
5. Miscellaneous income."

4. The learned Government Advocate referred to the instructions given by the respondent, which is in the form of a draft counter affidavit. On a perusal of the same, it is seen that the reasons set out in the impugned assessment orders have been reiterated in the draft counter affidavit and they do not advance the case of the respondent.

5. So far as wrong claim of input tax credit is concerned, the petitioner, while submitting their objections on 24.4.2017, 04.5.2017 and 04.5.2017 respectively to the revision notices dated 06.3.2017, requested the respondent to give statement on monthly basis and also invoice-wise break-up in respect of the suppliers to enable them to scrutinize their documents and produce invoice copies of the relevant vendors for the alleged wrong value added tax credit claim. The respondent, while considering the request of the petitioner, did not furnish the documents, but made an observation in the impugned assessment orders that if the petitioner wanted additional details, they could have applied for the same before the Assessing Officer.

6. On perusal of the objections, I find that the petitioner made a specific request for furnishing of statement on monthly basis and also invoice-wise break-up in respect of the suppliers concerned. Therefore, the finding that the petitioner could have sought for details is incorrect, as they have already sought for the details.

7. So far as Form WW, which was produced by the petitioner appended along with the audited financial statement, is concerned, the respondent would state that there are certain discrepancies. The reason for coming to such a conclusion is that the petitioner produced records to show that there has been intra unit transfer. On coming to know of the said fact, the respondent termed the sale as a suppression on the part of the petitioner and confirmed the proposal. Such a finding is incorrect because the respondent should examine the correctness of the intra unit transfer and if it is really an intra unit transfer, then the question of sale does not arise. Therefore, the observation with regard to Form WW and the audited statement produced by the petitioner is incorrect.

8. With regard to sale of capital goods, the petitioner produced certificates from the buyer. According to the respondent, the certificate is defective, as the commodity code has not been properly mentioned. If there is a defect in the certificate, nothing prevented the respondent from returning the

certificate for rectifying the errors, if any. This alone would be a reasonable procedure to be adopted by the Assessing Officer. Therefore, foreclosing the petitioner's right without returning the alleged defective certificate is incorrect.

9. With regard to service income, the petitioner has pointed out that the petitioner has attached the required audited statement in respect of the sale of service. The respondent would opine that the financial statements produced by the petitioner are not enough for proving the non liability and therefore, confirmed the proposal. If, according to the respondent, the documents produced by the petitioner are insufficient, then an opportunity ought to have been granted to the petitioner to produce additional documents or explain whatever documents have been placed. Hence, the respondent should not have confirmed the proposal on the said head for the reasons given by him in the impugned assessment orders.

10. With regard to miscellaneous income, the petitioner provided break-up details of miscellaneous income stating that they are from DGFT drawback claim provision and creditors write off and with regard to sale of scrap, they had indicated the amount and shown that they had already paid tax at 5%. However, the respondent confirmed the proposal under the said head by stating that the details furnished by the petitioner are also taxable categories and hence, confirmed the proposal. It is not clear as to how the respondent has brought the drawback claim within the taxable category. This finding is devoid of reasons.

11. Though the petitioner had not made a specific request for affording an opportunity of personal hearing, considering the nature of assessment and the points involved, the respondent ought to have provided an opportunity of personal hearing, which would have solved several of the issues and in fact, it might have even avoided the present litigation.

12. Thus, on all the above grounds, the findings rendered by the respondent on the above five issues are incorrect and not tenable. In the light of the above, this Court is inclined to interfere with the impugned assessment orders on the above indicated five issues and remit the matters back to the respondent for a fresh consideration.

13. With regard to the purchase from registration certificate canceled dealers, since the tax component is not substantial, it appears that the petitioner themselves agreed to pay the tax dues under the said head. Therefore, the proposal under the said head namely purchase from registration certificate canceled dealers is confirmed.

14. Therefore, the writ petitions are partly allowed with the following directions :

(i) The respondent is directed to give the statement on monthly basis and invoice-wise break-up details in respect of the suppliers, so that the petitioner would be able to explain with regard to the allegation of wrong claim of value added tax credit.

(ii) While furnishing the particulars, the respondent is directed to return the certificate issued by the buyers with regard to capital goods, as it has been found defective, giving liberty to the petitioner to correct the defects and represent the certificate.

(iii) After the receipt of documents mentioned in sub-paragraphs (i) and (ii) above, the petitioner is granted 15 days' time to file the additional objections with regard to all the five issues and on receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessments under those five heads indicated above, in accordance with law.

(iv) Till the above direction is complied with, the respondent shall not initiate any coercive action.

No costs. Consequently, the above WMPs are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT), Chengalpattu Assessment Circle,
No.16-A, I Floor, I Main Road, Anna Nagar, Chengalpattu-1.

+ 1 cc to M/s.N.Inbarajan, Advocate,SR.64740

+ 1 cc to The Special Govt.Pleader, SR.65494

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NR 11/09/2017