

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2017
Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition Nos. 26412 to 26419 of 2017
and
W.M.P. Nos. 28080 to 28087 of 2017

Essar Steel India Ltd.,
rep. by its Authorized Signatory
Jiten Waghela, Sri perumbadur ... Petitioner in all

Vs.

The Deputy Commissioner (CT) II (FAC)
Large Tax Payers Unit,
Dugar Tower,
Marshall Road, Egmore,
Chennai - 600 008. ... Respondent in all

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari Mandamus to call for records of the impugned proceedings of the respondent, in TIN No. 33940301099/2008-09, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 respectively dated 15.09.2017, and to quash the same and further, to direct the respondent to redo the assessment in accordance with law after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr. N. Murali

For Respondent : Mr. S. Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr. N. Murali, the learned counsel appearing for the petitioner and Mr. S. Kanmani Annamalai, the learned Additional Government Pleader, accepting notice on behalf of the respondent. With the consent of the learned counsel appearing on either side, all these Writ Petitions are taken up for disposal. One more reason for taking up these Writ Petitions for disposal is on account of the glaring errors, which are apparent on the face of the impugned assessment orders, which requires no further documents to substantiate its validity.

2. The petitioner is a registered dealer on the file of the respondent, under the provisions of both the Tamil Nadu Value Added Tax Act, 2006 (henceforth, referred to as TNVAT Act) and Central Sales Tax Act, 1956, is a Large Tax Payers Unit.

3. The petitioner is engaged in the manufacture of Iron and Steel products, having Factories/Branches in various parts of India, including manufacturing facility at Sriperumbudhur. The place of business of the petitioner/Company was subjected to VAT Audit, under Section 64 (4) of TNVAT Act, for a period from 2008-09 to 2015-16, by a group of Enforcement Wing Officials, who conducted the audit from 17.06.2015 to 29.07.2016. It is not in dispute that, for all the assessment years, viz., 2008-09 to 2015-16, the petitioner was deemed to have been assessed under Section 22 (2) of TNVAT Act. Based on the Audit Slip, the petitioner was directed to submit their explanation/reply, which was complied with by the petitioner. The Audit Report was forwarded to the respondent, who is an Assessing Officer of the petitioner, which has resulted in issuance of the Revision Notices, dated 27.04.2017, for all the eight assessment years.

4. One common issue for all the assessment years is with regard to the claim for exemption made by the petitioner on the ground that, they have effected zero rated sales, i.e. the sales to the Special Economic Zone (SEZ). The other common issue, arising in all the assessment years 2008-09 to 2015-16, is with regard to mismatch of details found in Annexure II of the petitioner's purchasing dealer with that of the details founds in Annexure I of the selling dealer. Apart from that, there are other subsidiary issues, which may not be very relevant at this juncture. On receipt of the Revision Notices, the petitioner submitted their interim replies, dated 30.05.2017. This Court would like to focus on the issues, relating to the mismatch and zero rated sales at the first instance.

5. The petitioner, in their interim reply, among other things, pointed out that, during the inspection, documentary evidence in respect of zero rated sales were called for, and the records were called for, after a period of six years, and they have produced the following records:-

- a) Statement relating to SEZ Sales;
- b) Sample sale invoice copies ;
- c) Sample of ARE1 Copies delay acknowledged by SEZ Authorities.

6. Further, the petitioner stated that, they are once again enclosing all the documents already submitted through

their letter, dated 08.03.2016, at the time of inspection, and, if any other documents are required, the respondent may be pleased to inform them, so that, they may produce those documents. With regard to the issue, relating to mismatch, the petitioner specifically pointed out that, they have accounted for all the purchases SEZ in Annexure-I. However, the seller has not shown the same in Annexure II, and therefore, there is a difference. The petitioner further stated that, for the purchases accounted, taxes have been paid, and for non-reporting of the turnover by the seller, in their returns, the Department has to proceed against the seller. The petitioner relied upon the decision of this Court, in the case of (JKM Graphics Solutions Pvt. Ltd., Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai) reported in 2017 99 VST 343 (Mad) in support of their claim. The petitioner also requested for the invoice details of the other end dealer, and specifically sought for an opportunity of personal hearing.

7. As could be seen from the interim replies, the petitioner has also submitted their objections to the other grounds, on which, revision of assessments was proposed. The petitioner referred to the Clarification issued by the Principal Commissioner of Commercial Taxes, dated 01.04.2017, wherein, it has been directed that the Assessing Authority should furnish details of seller invoice number/TIN Number. Therefore, the petitioner requested the respondent to furnish the seller's invoice number/TIN Number in order to file reconciliation.

8. On a perusal of the impugned assessment orders, it is seen that the first 3 1/2 pages of the impugned assessment orders are nothing but verbatim reproduction of the revision notice and the reply given by the petitioner, and the discussion starts in page No.4, wherein, the respondent has found fault with the petitioner, by stating that, they have not furnished any information to the Enforcement Wing Officials, or to the Assessing Officer, and without going through the details furnished by the petitioner, has simply stated that the seller details and invoice details were not furnished. After recording so, page Nos.5 to 8 and part of Page No.9 are tabulated statement, covering the details of invoice, viz., the Mismatch. At the first blush, it appears that the details have been fully furnished, but, on a closure scrutiny, it is seen that the details of the purchasing dealer found in Annexure-I have been furnished, whereas, the details of Annexure II in respect of the selling dealer have not been furnished, viz., the details such as invoice number/TIN Number, accommodated in Sales To and Sales Tax have been left blank, and have been indicated with numeric digit '0'. However, in the last column, the respondent has arrived at the difference, i.e. the difference between the

VAT paid and VAT payable. It is not clear, as to how, the respondent has arrived at such a difference. Undoubtedly, the petitioner has sought for details with regard to the seller's invoice number/TIN Number in order to file reconciliation, but the same has not been furnished. There is a circular to the said effect issued by the Principal Commissioner of Commercial Tax Department and the respondent is bound by such Circular. This non-furnishing of the vital details has definitely resulted in grave violation of principles of natural justice. With regard to the claim for exemption made by the petitioner for zero rated sales, the respondent has stated that the petitioner has not filed any documentary evidence to substantiate the same either before the Enforcement Wing Officials at the time of Audit, or before the Assessing Officer at the time of filing reply.

9. Thus, two errors have been committed by the respondent while making such observation. Firstly, the respondent did not call for any such specific document. Secondly, non furnishing of the documents before the Enforcement Wing Officials is of little avail. When the revision of assessment proceeding has been taken up by the Assessing Officer, the Assessing Officer has to independently apply his mind, and assess the turnover. One more factual aspect to be borne in mind is that, the petitioner was deemed to have been assessed to tax under Section 22 (2) of TNVAT Act. The documents, which the respondent now insists upon are not statutorily required to be furnished by the petitioner while filing their monthly returns. Therefore, the respondent could not have taken such a stand that the petitioner did not produce documents. The respondent has ignored the specific request made by the petitioner, in their interim reply, in Para 3.5 that, if any other documents are required, the respondent may be pleased to inform them, so that, they may produce the same. These two glaring errors are sufficient to hold that the impugned assessment orders are totally unsustainable.

10. The above two issues, being major issues, this Court is of the view that the matter requires to be remanded to the respondent for fresh consideration, and while doing so, all the other subsidiary or ancillary issues arising in the impugned assessment orders can very well be redone. I am hasten to add that the petitioner is a limited Company, having a huge turnover and the Assessing Officer is an Officer, attached to Large Tax Payers Unit. Therefore, it is all the more important for the respondent to make thorough exercise in respect of such assessments, as the correct rate of tax has to be recovered from these large tax payers/assesseees.

11. On a perusal of the details furnished with regard to the mismatch, I find that the selling dealers are also Blue Chip Companies, and obviously, would be registered under the Large Tax Payers Unit. Thus, cross verification within the same Unit or a different section of the same Unit, is not a task, which is impossible. The assessment proceedings are not a open and shut proceedings, but a matter, which requires detailed discussion. This Court has time and again held that the duty of the Assessing Officer is paramount, as he is an independent authority, and cannot be guided or compelled to follow the direction of the enforcement authority. The assessment should be made based on the documents placed by the assessee before the Assessing Officer. Thus, for all the above reasons, the impugned assessment orders are required to be redone.

12. In the result, all these Writ Petitions are allowed, the impugned orders are set aside, and the matters are remanded to the respondent for fresh consideration. The respondent shall furnish all the details, viz., the invoice number/TIN number etc., of the selling dealer and also indicate as to what are the documents that the petitioner should produce to prove and substantiate their claim. After receipt of the details, the petitioner is directed to submit their final objections to the revision notices, dated 27.04.2017. On receipt of the objections, the respondent shall fix a date for personal hearing and carefully peruse the documents placed by the petitioner and redo the assessments in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

sd

To

The Deputy Commissioner (CT) II (FAC)
Large Tax Payers Unit,
Dugar Tower, Marshall Road, Egmore,
Chennai - 600 008.

8 ccs to Mr.N. Murali, Advocate, Sr. 72999

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to 26419 of 2017

RV (CO)
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