IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.16862 to 16865 of 2017
and W.M.P.Nos.18332 to 18335 of 2017

Terex India Pvt. Ltd.,
Represented by its Authorised Signatory
E-18, Phase II
Expansion II, SIPCOT Industry Complex,
Hosur - 635 109. .. Petitioner in all W.Ps.

..Vs..

The Assistant Commissioner (CT)
Hosur (North). .. Respondent in all W.Ps.

Prayer in W.P.No.16862/2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in order dated 22.02.2017 in TIN/33193323401/2011-2012 in so far as it seeks to raise a demand under the head "Incorrect claim of ITC" and quash the same.

Prayer in W.P.No.16863/2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in order dated 22.02.2017 in TIN/33193323401/2012-2013 in so far as it seeks to raise a demand under the head "Incorrect claim of ITC" and quash the same.

Prayer in W.P.No.16864/2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in order dated 22.02.2017 in TIN/33193323401/2013-2014 in so far as it seeks to raise a demand under the head "Incorrect claim of ITC" and quash the same.

Prayer in W.P.No.16865/2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in order dated 22.02.2017 in TIN/33193323401/2014-2015 in so far as it seeks to raise a demand under the head "Incorrect claim of ITC" and quash the same.

For Petitioner in all W.Ps. : Mr.Adithya Reddy

For Respondent in all W.Ps. : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. With the consent on either side, the writ petitions are taken up for disposal.

2.The petitioner, a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), is before this Court challenging the orders of assessment under the said Act for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15. The petitioner has not challenged the assessment orders on all the issues except with regard to only one issue regarding the alleged incorrect claim of ITC which was proposed to be reversed on the ground of cross verification of Annexure I of the petitioner's return and Annexure II of the other end dealer generated from MIS report. The petitioner on receipt of the show cause notice dated 06.10.2015 for all the assessment years submitted their reply contending that the sales not declared by the selling dealer was due to timing difference. In other words, it is stated that the selling dealer has reflected the transaction in the subsequent months and it is not the case of suppression or that the petitioner has availed the input tax credit more than their entitlement. Though such a reply was given by the petitioner, the respondent while completing the assessment and passing the impugned order stated that the turnover proposed on cross verification is not proved with copies of returns filed by their sellers, mode of payment, mode of transport, etc. The finding rendered by the Assessing Officer is clearly in violation of the directions issued by this Court in the case of JKM Graphics Solutions vs. Commercial Tax Officer reported in (2017) 99 VST 343 (Mad), wherein this Court considered this issue in a batch of cases and issued certain directions.

3.The sum and substance of the direction is that an enquiry is required to be conducted wherein not only the details from the petitioner should be obtained, the details of the other end dealer also should be obtained and the petitioner should furnish those details and given an opportunity to rebut the provisional conclusion arrived at. Without reference to such a procedure, the respondent was not justified in completing the assessment by stating that the cross verification has not been proved with a copies of returns filed by their sellers, mode of payment, mode of transport, etc. Therefore, to that extent, the impugned orders of assessment and issue No.1, namely, Incorrect claim of ITC calls for interference.

4.Learned counsel appearing for the petitioner would submit that with regard to other issues the petitioner may be given liberty to work out his remedy in accordance with law..

5.In the result, the writ petitions are allowed and the orders of assessment with regard to the incorrect claim of ITC on cross verification is set aside in respect of all the four assessment years and the matter is remanded to the respondent for fresh consideration on the said issue by adhering to the guidelines laid down by this Court in the case of JKM Graphics Solutions (supra). In respect of the other issues, it is open to the petitioner to work out their remedies in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner (CT)
Hosur (North).

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.46206
+1cc to the Government Pleader, S.R.No.46440

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CS/19/07/17