IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.37900 & 37901 of 2015 and
M.P.Nos.1 & 1 of 2015

McRennett Foods Private Limited,
Rep. by its Managing Director,
Thiru.S.Ravi Chandran,
No.680, Anna Salai, Thousand Lights,
Chennai - 600 006. ... Petitioner in both the W.Ps.

Vs.

Assistant Commissioner (CT),
Anna Salai Assessment Circle,
No.1, PAPJM Annexe Building,
IV Floor, Greams Road,
Chennai - 600 006. ... Respondent in both the W.Ps.

Prayer in W.P.No.37900 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the assessment order in TIN/33040640221/2010-2011 dated 01.10.2015 passed by the respondent, quash the same as arbitrary and illegal.
Prayer in W.P.No.37901 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the assessment order in TIN/33040640221/2009-2010 dated 08.10.2015 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.K.Venkatesh,
Government Advocate

C O M M O N O R D E R

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2.With the consent of the learned counsel on either side, the writ petitions are taken up for disposal.

3.The petitioner who is a registered dealer on the file of the respondent is aggrieved by the assessment orders passed for the assessment years 2009-10 and 2010-11 under the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT" Act in short). The respondent issued separate notices dated 16.04.2014 for both the assessment years. For the year 2009-10, it was stated that on cross verification of the purchases reported in the Annexure-I filed by the petitioner with the connected sales reported by the sellers in their Annexure-II, mismatch has been noticed. The petitioner has been called upon to give the explanation. The petitioner, vide reply dated 28.05.2014, stated that as per the information furnished by their supplier M/s.International Trading Agencies, they have accounted the supplies made to the petitioner only in their returns and all other supplies made to their different showrooms had been accounted in the local sales. The copies of the bills issued by the party in favour of the other showrooms were enclosed for verification of the respondent and it was also pointed out that on a perusal of the bills, it will be clear that the supplies have been made to the petitioner and as such they have taken input tax credit. For the year 2010-2011, notice dated 16.04.2014 was issued in which it is stated that apart from proposing to reverse the input tax credit on the ground of mis-match, there were other issues and in particular with regard to proposal to reverse the input tax credit on the purchase of goods, for which the petitioner submitted their objections dated 28.05.2014, stating that they are producing bread and buns which are exempted from sales tax and they are not taking input tax credit for raw materials used for the production of exempted bakery products and the input tax credit availed is only on the raw materials used for taxable bakery products like cake, pastries, biscuits etc., and every month they calculate the exempted sales turnover ratio and calculate the reverse credit from the raw material input tax credit. This reverse credit amount has been shown in their sales tax returns. The petitioner enclosed the copies of the relevant calculation.

4.The respondent however, did not provide any opportunity of personal hearing and completed the assessment. So far as the issue relating to mismatch is concerned, already this Court has issued a direction as to how the issue has to be decided for which the personal hearing is mandatory. With regard to the other issues relating to availment of input tax credit for the raw materials used, the petitioner's case is that they are not taking input tax credit for the raw materials used for exempted bakery products. However, this explanation has not been properly considered and the respondent has finalised the assessment by adopting a formula. According to the petitioner, the amount of input tax credit claimed as mentioned in the formula, viz. Rs.62,22,930.00/- is incorrect, as the respondent has taken the entire amount.

5.In my considered view, had the respondent afforded an opportunity of personal hearing to the petitioner, these issues could have been sorted out in one way or the other. Thus, for the above reasons, this Court is inclined to remit the matter back for a fresh consideration before the respondent. Apart from that, the petitioner has already paid 25% of the disputed tax as per the interim direction of this Court.

6.For the above reasons, instead of setting aside the impugned proceedings, couple of issues have to be decided. The petitioner is directed to treat the impugned proceedings as show-cause notices and submit their objections on the issues which they are aggrieved and on receipt of such objections, the respondent shall afford an opportunity of personal hearing and redo the assessment under those heads. Till the orders are passed in terms of the above directions, no coercive action shall be initiated against the petitioner for recovery of the remaining tax and penalty as quantified in the impugned assessment order.

7.The writ petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

abr/km

To

The Assistant Commissioner (CT),
Anna Salai Assessment Circle,
No.1, PAPJM Annexe Building,
IV Floor, Greams Road,
Chennai - 600 006.

+ 1 cc to M/s.Joseph Prabakar, Advocate,SR.54817
+ 1 cc to The Govt.Pleader, SR.

W.P.Nos.37900 & 37901 of 2015

SV(CO)
NR 21/08/2017