IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.6814 & 6815 of 2015 & W.M.P.Nos.2 & 2 of 2015 and
W.P.Nos.6835 & 6836 of 2015 & W.M.P.Nos.1 & 1 of 2015 and
W.P.No.28637 of 2017

W.P.Nos.6814 & 6815 of 2015

M/s.The Indian Hume Pipe Co. Ltd.,
rep. by its Deputy General Manager,
New No.361, Lloyds Road,
Gopalapuram, Chennai-600 086. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
6, Greenways Road, II Floor,
Taluk Office Building, R.A.Puram,
Chennai-600 028. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in TIN/33900720064/2012-13 & 2013-14 and quash the re-assessment proceedings dated 28.11.2014, 05.12.2014, respectively, passed therein and further direct the respondent to re-consider the issue relating to the entitlement of the petitioner to claim deduction under Section 5 of the TNVAT Act, 2006 read with Rule 8(5)(a) of the TNVAT Rules, 2007 in the light of the law laid down by this Court in the case of State of Tamil Nadu vs. Hindustan Dorr Oliver reported in 27 VST 397 after verifying the account books which is mandatory under Rule 10(11) for re-opening a deemed assessment.

W.P.Nos.6835 & 6836 of 2015

M/s.The Indian Hume Pipe Co. Ltd.,
rep. by its Deputy General Manager,
New No.361, Lloyds Road,
Gopalapuram, Chennai-600 086. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Royapettah Assessment Circle,
   6, Greenways Road, II Floor,
   Taluk Office Building,
   R.A.Puram, Chennai-600 028.

2. The Appellate Deputy Commissioner,
   C.T.Building Annexe, 3rd Floor,
   Greams Road, Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned proceedings of the 2nd respondent in S.P.No.32 & 33/2015 in APV.25 & 26/2015, respectively, and quash the order dated 19.02.2015, passed therein and further direct the 2nd respondent to grant absolute stay of collection of balance of disputed taxes and penalty to the petitioner herein.

W.P.No.28637 of 2017

M/s.The Indian Hume Pipe Co. Ltd.,
rep. by its Deputy General Manager,
New No.361, Lloyds Road,
Gopalapuram, Chennai-600 086. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Royapettah Assessment Circle,
   6, Greenways Road, II Floor,
   Taluk Office Building, R.A.Puram,
   Chennai-600 028.

2. The Chairman and Managing Director,
   Tamil Nadu Water Supply and
   Drainage Board, 31, Kamarajar Salai,
   Chepauk, Chennai-600 005. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN/33900720064/2016-17 and quash the order dated 13.07.2017 passed therein and further direct the first respondent herein to refund the unadjusted amount of Tax Deducted at Source of Rs.4,61,65,769/- lying to the credit of the petitioner's account as on 31.01.2016.

For Petitioner in all W.Ps	: Mr.R.L.Ramani, Senior Counsel assisted by Mr.B.Raveendran
For Respondents and	: Mr.K.Venkatesh, Government Advocate for R1 in WP.No.28637 of 2017
	: Mrs.S.Thamizharasi for R2 in W.P.No.28637 of 2017

C O M M O N O R D E R

Heard Mr.R.L.Ramani, learned Senior Counsel assisted by Mr.B.Raveendran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. With consent on either side, these writ petitions are taken up for final disposal.

2.The Writ Petitions can be classified into three categories.

(i) W.P.Nos.6814 & 6815 of 2015, have been filed for issuance of Writ of Certiorarified Mandamus, to quash the re-assessment proceedings for the assessment years 2012-13 and 2013-14 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as “the TNVAT Act”) and for consequential relief to re-consider the issue relating to the entitlement of the petitioner to claim deduction under Section 5 read with Rule 8(5)(a) of the TNVAT Rules. The petitioner's case rests upon a decision of the Hon'ble Division Bench of this Court in the case of State Tamil Nadu vs. Hindustan Dorr Oliver reported in (2010) 27 VST 397 (Mad).

(ii) W.P.Nos.6835 & 6836 of 2015, have been filed against the orders passed by the appellate authority in the stay petitions filed in the appeals filed by the petitioner challenging the assessment orders for the years 2012-13 and 2013-14. An interim order has been granted by directing the authorities to adjust the refund, which the petitioner is entitled to as against the mandatory pre-deposit.

(iii) W.P.No.28637 of 2017 has been filed by the petitioner praying for issuance of Writ of Certiorarified Mandamus, to quash the proceedings dated 13.07.2017, by which the first respondent has declined to take up the petitioner's application for refund on the ground that W.P.Nos.6814, 6815, 6835 & 6836 of 2015, are pending.

3.The facts of the case lie in a very narrow campus. The question would be as to whether the petitioner is entitled to refund by applying the decision in the case of Hindustan Dorr Oliver (supra). So far as the assessments for the years 2007-08 & 2008-09 are concerned, this Court by order dated 03.07.2015, in W.P.No.19518 of 2015, and by order dated 21.09.2017, in W.P.No.24885 of 2015, set aside those assessments and remanded the matter back to the assessing officer to pass fresh orders on merits within a time frame. It appears that the assessing officer has not redone the assessment thereby, violated the time limit fixed by the Court for which the assessing officer would be liable for contempt.

4.So far as the assessment years 2009-10 to 2011-12 are concerned, the petitioner has been deemed to be assessed under Section 22(2) of the TNVAT Act. The assessments for the years 2012-13 and 2013-14 have been kept in abeyance by an application filed by the assessee under Section 25 of the TNVAT Act. Assessments for the years 2012-13 and 2013-14 are impugned before me.

5.Considering the manner in which the assessments have been made and taking note of the decision of the Hon'ble Division Bench and also the two orders passed by this Court for the earlier assessment years, remanded the matter for fresh consideration, this Court is of the view that the matter should be remanded back to the assessing officer with a direction for the assessment to be redone especially, in the context of the decision of the Hon'ble Division Bench in the case of Hindustan Dorr Oliver (supra), wherein it has been held as follows:

> "3..... Keeping in mind the above wide powers of the Tribunal, when we examine the order impugned in this revision, according to the assessee, the inter-State sale effected by it for the assessment year 1990-91 to the value of Rs.83,70,360 was specifically meant for the execution of works contract entered with M/s.Madras Refineries Ltd. Therefore, it was entitled for the said sum to be deducted from its total turnover as provided under Section3B (2)(a) of the Act. The said provision reads as under:
>
> > "The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall, on and from the June 26, 1986, be arrived at after deducting the following amounts from the total turnover of that dealer,_

(a) all amounts involved in respect of goods involved in the execution of works contract in the course of export of the goods out of the territory of India, or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce."

Therefore, what was required to be examined was whether the amounts involved in the purchase of goods from other States by the assessee was so involved in the execution of works contract in the course of inter-State trade or commerce. In order to establish the said fact, the assessee produced before the Tribunal along with its return, annexures I to IV. The Tribunal, on a detailed analysis of those documents, has rendered a finding that the import of the various goods by the assessee were in respect of work order No.88948, that the movement of goods originated from outside the State of Tamil Nadu were specifically meant for the works done by the assessee for M/s.Madras Refineries Limited at Manali. In paragraph 9 of the Tribunal's order, the Tribunal has made a detailed recording of each one of the annexures and has rendered a specific finding to the above effect.

....

8.In such circumstances, when the Tribunal has rendered a factual finding based on which it had reached the conclusion that the assessee was entitled for the deduction as provided under Section 3B(2)(a) of the Act, there is no scope for this court to interfere with the said factual finding, in the absence of any serious illegality committed by the Tribunal in analysing the material evidence placed before it by the assessee; may be for the first time; while dealing with the appeal before the Tribunal. We, therefore, do not find any merit in this revision. The tax case revision fails and the same is dismissed."

6.For the above reasons, W.P.Nos.6814 & 6815 of 2015 are allowed, the impugned orders are set aside and the matters are remanded to the respondent for redoing the assessment afresh along with the assessments for the years 2007-08 & 2008-09.

7.In the light of the above orders, no further orders are required in W.P.Nos.6835 & 6836 of 2015 and the same are closed.

8.In the light of the above decision, remanding the matter to the assessing officer for fresh consideration, W.P.No.28637 of 2017, is allowed and the impugned order is set aside by restoring the petitioner's application for refund, which shall be taken up for consideration after the assessments are completed for the years 2007-08, 2008-09, 2012-13 and 2013-14. The assessing officer is directed to redo the assessment within a period of six weeks from the date of receipt of a copy of this order. This time limit is fixed taking into consideration that in spite of a direction issued by this Court in the earlier writ petitions to complete the assessment within a period of six weeks, the assessing officer has not obeyed the order. Therefore, the assessing officer is expected to comply with this order scrupulously. Needless to say that the assessee/petitioner should extend full cooperation in the assessment proceedings. The respondents shall take note of the decision of the Hon'ble Division Bench in the case of Hindustan Dorr Oliver (supra).

Writ petitions are accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Assistant Commissioner (CT),
   Royapettah Assessment Circle,
   6, Greenways Road, II Floor,
   Taluk Office Building, R.A.Puram,
   Chennai-600 028.

2. The Appellate Deputy Commissioner,
   C.T.Building Annexe, 3rd Floor,
   Greams Road, Chennai.

3. The Chairman and Managing Director,
Tamil Nadu Water Supply and
Drainage Board, 31, Kamarajar Salai,
Chepauk, Chennai-600 005.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.84934
+1cc to the Government Pleader, S.R.No.84922 & 84923

W.P.Nos.6814 & 6815 of 2015 &
W.P.Nos.6835 & 6836 of 2015 &
W.P.No.28637 of 2017

ssd(co)
cs/23/01/18