IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.Nos.44547 to 44549 2016
and W.M.P.Nos.38364 to 38366 of 2016

M/.Locuz Enterprises Solutions Limited,
Represented by its Managing Director,
Vijay Kumar Wadhi ... Petitioner in all W.Ps'

vs.

The Assistant Commissioner (CT)
Mandaveli Assessment Circle,
Greenways Road,
Chennai - 28. ... Respondent in all W.Ps'

Writ petitions filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records of the respondent in TIN 33760802882/2008-09, 2009-10 & 2010-11 dated 06.09.2016 and quash the same.

For Petitioner : Mr.R.Kumar

For Respondent (In all W.Ps') : Mr.K.Venkatesh Govt. Advocate.

COMMON ORDER

1. These matters had come up for hearing before this Court on 02.01.2017. On that date, Mr.Kanmani Annamalai had appeared for the respondent and sought time to obtain instructions in these matters.

2. Today, Mr.K.Venkatesh, appears on behalf of the respondent. The learned counsel says that he will argue the matter based on the record placed before this Court by the petitioner and therefore, with the consent of counsel for the parties, these writ petitions are taken up for final disposal.

3. The captioned writ petitions assailed three separate orders of even date i.e., 06.09.2016, which are passed qua assessment years 2008-2009, 2009-2010 & 2010-2011

4. To be noted, insofar as the impugned orders are concerned, the petitioner is aggrieved by only that part of the order which reverses input tax credit, on the ground that there was a mismatch between the information available on the website of the Department, as against that which is contained in the returns filed by the petitioner.

5. Thus, in each of the assessment years, the respondent has reversed input tax credit to the extent set out herein below:

S.No.	Assessment years	In put tax credit Rs.
1	2008-2009	21,552/-
2	2009-2010	1,19,210/-
3	2010-2011	21,041/-

6. Counsel for the petitioner says that the impugned orders are flawed on account of two reasons. First, mismatch in the information as available on the Department Website and that which is contained in the petitioner's returns cannot form the basis of reversal of input tax credit. In support of this submission reliance is placed by the petitioner on the judgment of the single judge of this Court, passed in: Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai - 6 [2012] 50 VST 179.

6.1. Second, that penalty could not have been levied under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006 (in short “the 2006 Act”) , unless it was the case of escapement of income. In support of this submission, reliance is placed by the petitioner on the judgment of a single judge of this Court, passed in: Nokia India Private Ltd., Vs. Deputy Commissioner (CT)-IV, Large Tax Payers Union, [2015] 79 VST 137 (Mad).

7. Mr.Venkatesh, cannot but argue that insofar as the aspect of mismatch in information is concerned, it is covered by the judgment of this Court in Althaf Shoes (P) Limited Vs. Asst. Commissioner (CT) Valluvarkottam Assessment Circle, 50VST 179 (MAS). As regards the levy of penalty is concerned, Mr.Venkatesh, concedes that unless the petitioner's case falls within the provision of Section 27A of the 2006 Act, no penalty can be levied under Section 27(3) of the very same Act.

8. It is in these circumstances, Mr.Venkatesh submits that, if, this Court were to direct the respondent to redo the assessment in a time bound manner, the needful would be done.

9. Having regard to the averments made by the petitioner and after having perused the records, I am of the view that the impugned orders deserve to be set aside. It is ordered accordingly. Needless to say, the respondent will be at liberty to redo the assessment, after giving due opportunity to the petitioner. The assessment, if redone, will be carried out having regard to the extant provisions of law, in particular, the judgments referred to herein above.

10. These writ petitions are, accordingly, disposed of. Resultantly, the connected pending applications are also closed. There shall, however, be no order as to costs.

s/d-
Assistant Registrar(CS-VI)

//True Copy//

Sub-Assistant Registrar

To
The Assistant Commissioner (CT)
Mandaveli Assessment Circle,
Greenways Road,
Chennai - 28.
+1 CC to Mr. R. Kumar, Advocate sr 1117
+1 CC to Special Govt. Pleader sr 1164

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