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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.737 to 740 of 2017
and
WMP(MD)No.596 to 599 of 2017

M/s.Golden Pipe Company,
Represented by its Managing Partner S.Abdul Jaffar,
3/225-A, Thanjavur Road,
Shahul Hameethia Rice Mill Compound,
Ukkadai, Ariyamangalam,
Trichy-620010. .... Petitioner in all WPs

vs.

The Commercial Tax Officer,
Thiruverumbur Assessment Circle,
Trichy. ..... Respondent in all WPs

Prayer in WP(MD)No.737/2017 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in TIN 33303565598/2011-12 dated 30.11.2016 and to quash the same as illegal, arbitrary and against the judgment of this Hon'ble Court reported in the case of Infiniti Wholesale Limited Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai, reported in [2015] 82 VST 457 and further direct the respondent to afford a opportunity of personal hearing and consider the relevant records and representation dated 27.12.2016 and thereafter to pass order afresh.

Prayer in WP(MD)No.738/2017 : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records in TIN 33303565598/2012-13 dated 30.11.2016 and to quash the same as illegal, arbitrary and against the judgment of this Honourable Court reported in the case of Infiniti Wholesale Limited Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai, reported in [2015] 82 VST 457 and further direct the respondent to afford a opportunity of personal hearing and consider the relevant records and representation dated 27.12.2016 and thereafter to pass order afresh.

Prayer in WP(MD)No.739/2017 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in TIN 33303565598/2013-14 dated

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30.11.2016 and to quash the same as illegal, arbitrary and against the judgment of this Honble Court reported in the case of Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle Chennai reported in (2015) 82 VST 457 and further direct the respondent to afford a opportunity of personal hearing and consider the relevant records and representation dated 27.12.2016 and thereafter to pass orders afresh.

Prayer in WP(MD)No.740/2017 : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records in TIN 33303565598/2014-15 dated 30.11.2016 and to quash the same as illegal, arbitrary and against the judgment of this Honourable Court reported in the case of Infiniti Wholesale Limited Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai, reported in [2015] 82 VST 457 and further direct the respondent to afford a opportunity of personal hearing and consider the relevant records and representation dated 27.12.2016 and thereafter to pass orders afresh.

For Petitioner(in all WPs) : Mr.S.Karunakar
For Respondent(in all WPs) : Mr.R.Karthikeyan
Additional Government Pleader

COMMON ORDER

The prayer in all these writ petitions are similar where a Writ of Certiorarified Mandamus is sought for to call for the records in TIN 33303565598/2011-12 to 2014-15 dated 30.11.2016, and to quash the same and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and representation dated 27.12.2016 of the petitioner and thereafter to pass fresh order.

2.From the Assessment year 2011-12 to 2014-15, for each assessment year, separate writ petitions are filed with the aforesaid prayer in these batch of cases.

3.Mr.R.Karthikeyan, learned Additional Government Pleader accepts notice for the respondent. Heard both sides. At the consent of the learned counsel for both sides, the writ petitions themselves are taken up for final disposal.

4.The petitioner is an Assessee under the respondent. For the said assessment years that is from 2011-12 to 2014-15, assessment has already been made. However, the respondent by notices dated 23.05.2016 issued notices for reversal of ITC for each of the assessment year. In the said notices themselves, an opportunity was given to the petitioner to produce the relevant records within 15 days to the respondent and also an opportunity of personal hearing was given to the petitioner for personal hearing on 28.06.2016.

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5.Even though the notices for reversal were issued where 15 days time was given and an opportunity of personal hearing was also fixed to the petitioner, within the said time stipulated by the respondent in the said notices dated 23.05.2016, the petitioner has not responded. However, belatedly on 04.11.2016, the petitioner had submitted a request to the respondent, seeking further time to produce the relevant records. Thereafter, the present impugned orders dated 30.11.2016 were passed by the respondent for each assessment year, whereby the proposal was confirmed.

6.In this regard, the learned counsel for the petitioner would contend that if at all any proposal is mooted for reversal of ITC, the details as to the transaction where there is a mismatch between Annexures I and II have to be specifically mentioned and to be given to the Assessee, then only, the suitable transaction to plug the hole and to give a satisfactory answer that there is no discrepancy between Annexures I and II, can be given by the Assessee to the respondent. In stead of doing the same, the very notices for reversal themselves were given a vague proposal by which it is stated that verification of web report of buyer and seller as per Annexure-I revealed that the Assessee had claimed certain amount as ITC, but the other end dealers have not paid VAT as per Annexure-II of the sellers. Therefore, it was proposed to reverse the ITC under Section 19(16) of the TNVAT Act, 2006.

7.The learned counsel for the petitioner would further contend that no doubt Section 19(16) has given such powers to the authorities for reversal of ITC, but once such proposal is mooted by way of notice, as has been issued in this case on 23.05.2016, the actual discrepancies as found by the inspection team for verification of the web report, has to be furnished in detail, then only, the Assessee will be in a position to respond the same by the item-wise discrepancy if any. In the absence of furnishing of any such item-wise alleged discrepancy between Annexures I and II, the petitioner may not be in a position to rebut the same, by producing the relevant record. At any rate, the learned counsel for the petitioner would submit that in order to collect the details from the sellers, the petitioner had sought for time and within the two weeks time they sought for, which was given subsequently, the petitioner could not collect the details. When details have been collected by the petitioner and after consolidating the same when the petitioner was about to present the same before the respondent authority, the impugned orders have been passed, whereby, the proposal has been confirmed. If an opportunity is given to the petitioner with the assistance of the department officials to verify each and every transaction, where the alleged discrepancy is found by the department between Annexures I and II, certainly, the petitioner would be in a position to rebut the same, by producing the necessary documents collected by the petitioner.

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8.In this regard, the petitioner would also rely upon a decision of this Court made in Infiniti Wholesale Limited Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai, reported in [2015] 82 VST 457. Based on the said order, the learned counsel for the petitioner would submit that the mere statement as proposed by the authority for reversal of ITC is not enough and unless the Assessee is assisted by the officials of the department concerned to verify the discrepancy allegedly shown by the department in item-wise transaction between Annexures I and II, the same cannot be the suitable defence to the Assessee concerned and in this regard, the learned counsel for the petitioner would submit that even though the petitioner has collected all the details and was able to present the same before the authorities and in fact, the petitioner had sent a detailed representation with all such details and particulars on 26.12.2016 before which since the impugned orders have been passed, the petitioner has come out with the present writ petitions as the respondent had no occasion to consider these details furnished by the petitioner on 26.12.2016.

9.The learned Additional Government Pleader for the respondents would submit that the power vested in the department under Section 19(16) of the TN VAT Act, 2006, is very clear and unambiguous which reads thus:-

> ''The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.''

10.By invoking the said power, notice was issued where 15 days time was given to respond and also a date was fixed for personal hearing. In spite of opportunity was given including personal hearing, the same was not utilised by the petitioner. Subsequently, only in the month of November 2016, the petitioner had responded by saying that the petitioner wanted further two weeks time to file a detailed reply. Even the said two weeks time given by the department was not utilised by the petitioner. Therefore, by exercising the power conferred under the provision referred supra, the present impugned orders have been passed by the department and the same are fully justifiable.

11.The learned Additional Government Pleader would also submit that as against the impugned orders, the petitioner is having appellate remedy under Section 51 of the TN VAT Act, 2006, which is efficacious remedy and without exhausting the same, the petitioner has approached this Court. Therefore, these writ petitions cannot be entertained.

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12.This Court has considered the said rival submission made by the learned counsel for both sides as well as the materials placed before this Court for perusal.

13.No doubt, power has been vested in the department under Section 19(16) of the TN VAT Act, 2006, whereby reversal of ITC can be made by the department. Therefore, this Court cannot find fault with the proposal by way of notice for reversal issued by the department on 23.05.2016, where 15 days time was given to the petitioner and personal hearing date was also given. Even though only 15 days time was given to the petitioner and within the said time, the petitioner since has not responded, it is for the department to decide the same on merits with available records and to pass final order. However, in this case, the department has not passed any final order and they waited till November 2016, till it receives a representation from the petitioner on 04.11.2016, seeking further two weeks time to respond. According to the respondents, the said two weeks time was given and only thereafter, the present impugned orders were passed.

14.This Court has considered the said facts and also the judgment referred to by the learned counsel for the petitioner. As has been pointed out by the learned counsel for the petitioner, in the notices dated 23.05.2016, it is merely stated that on verification of the web report there is a discrepancy between the entries of Annexures I and II. Though Annexures I and II have been separately given along with the notices, the same have not been produced by the petitioner before this Court. Assuming that Annexures I and II contain the transactions, there is no proof on the part of the respondent to show that a detailed item-wise discrepancies as found by the inspection team of the department on verification of the web report has been furnished to the petitioner. When this was asked for by the petitioner as claimed by the learned counsel for the petitioner, orally to the department, the same was not furnished. Ultimately, two weeks time was given within which the petitioner was not able to collect the details on their own to give a suitable defence in each of the transaction given in Annexures I and II, to allay the proposal submitted by the department that there are discrepancies between the entries in Annexures I and II. Ultimately, the petitioner though was able to collect the details, the same could not be furnished immediately, as within which since the two weeks time finally granted by the department ended at the last week of November 2016, the present impugned orders were passed on 30.11.2016. Only subsequently, the petitioner had given a detailed representation to the department on 27.12.2016 which is nearly about 20 pages, where so many details have been given, but the department had no occasion to consider all these details, as the same could not have been filed by the petitioner before the authority prior to the passing of the impugned orders.

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15.In view of the said facts and circumstances of the case, this Court is of the considered view that the impugned orders though have been passed after giving an opportunity of two weeks time to the petitioner, can be interfered with by this Court, because, the item-wise details between Annexures I and II for the alleged discrepancy since has not been submitted or furnished by the department and the petitioner is now able to collect all the details to give a suitable defence or reply to the department to satisfy themselves that there is no discrepancy between Annexures I and II, which is the very basis for reversal of ITC under Section 19(16), this Court is inclined to interfere with the impugned orders.

16.Resultantly, the following orders are passed.

(i)the impugned orders are quashed.

(ii)the matter is remitted back to the respondent for re-consideration. At the process of re-consideration, the respondent shall give a notice to the petitioner in each of the cases covered under this order requesting the petitioner to furnish the details collected by them within the period not less than 15 days from the date of receipt of such notice.

(iii)On receipt of such notice from the respondent, the petitioner shall produce those documents and the details already collected by the petitioner including the details mentioned in the representation dated 27.12.2016 within the said period of two weeks.

(iv)Thereafter, on comparison with the details furnished by the petitioner, still the department feels that discrepancies are found between the entries in Annexures I and II then, a personal hearing shall be given to the petitioner on a specific date to be mentioned in the notice to be specifically given by the respondent and on the date of hearing, the petitioner shall present before the authority/respondent and with the assistance of the department employee/official concerned, discrepancies can be verified and ultimately a final conclusion can be reached by the respondent and thereafter final orders shall be passed.

17.Since the respondent has given two weeks time and personal opportunity even before passing the present impugned orders and the same has not been properly utilised by the petitioner, this Court is also of the considered view that the aforesaid order remanding the matter back to the respondent for re-assessment by giving one more opportunity to the petitioner can be given only subject to the payment of 15% of the tax covered under the impugned orders in respect of each of the assessment year and the same shall be paid by the petitioner within one week from the date of receipt of a copy of this order and only thereafter, the

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directions aforementioned shall be done by both sides and the time limit can start only from the date of payment of the aforesaid amount by the petitioner.

With these observations and directions, all the Writ Petitions are disposed of. No costs. Consequently, WMP(MD)No.596 to 599 of 2017 is closed.

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Sd/-

Assitant Registrar(CS III)

/True copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Thiruverumbur Assessment Circle,
Trichy.

+4cc to M/s.S.KARUNAKAR, Advocate, in SR No. 3035,3036,3037,3038.
+1cc to Special Government Pleader, Sr.No. 3055

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