IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.3105 to 3109 of 2018 &
W.M.P. Nos.3818 to 3822 of 2018

Cosmo Granites Private Limited
Rep by its Director
D.N.Choudery
No. 6, Ranjith Road
Kotturpuram
Chennai - 600 085 ... Petitioner in all WPs

v.

The Assistant Commissioner
Kotturpuram Assessment Circle
No.46 Pasumpon Muthuramalingam Salai
Chennai - 600 028 ...Respondent in all WPs

W.P.No.3105/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned order of the respondent passed in TIN : 33380860806/2010-11 dated 14.12.2017 and quash the same as the impugned proceedings of the respondent is in gross violation of principles of natural justice

W.P.No.3106/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned order of the respondent passed in TIN : 33380860806/2011-12 dated 14.12.2017 and quash the same as the impugned proceedings of the respondent is in gross violation of principles of natural justice.

W.P.No.3107/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned order of the respondent passed in TIN : 33380860806/2012-13 dated 14.12.2017 and quash the same as the impugned proceedings of the respondent is in gross violation of principles of natural justice

W.P.No.3108/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned order of the respondent passed in TIN : 33380860806/2013-14 dated 14.12.2017 and quash the same as the impugned proceedings of the respondent is in gross violation of principles of natural justice

W.P.No.3109/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned order of the respondent passed in TIN : 33380860806/2014-15 dated 14.12.2017 and quash the same as the impugned proceedings of the respondent is in gross violation of principles of natural justice

For Petitioner : Mr.N.Murali

For Respondent : Ms.G.Dhanamadhri,
Government Advocate

COMMON ORDER

Heard Mr.N.Murali, learned counsel appearing for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate for the respondent. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, who is a registered dealer on the file of the respondent has filed these writ petitions challenging the assessment orders for the years 2010-11 to 2014-15.

3. The issues which fell for consideration in respect of all the assessment years are pertaining to sales made to SEZ, which were disallowed, the zero-rated sales which were disallowed, reversal of input tax credit on the ground of mismatch between Annexure-1 and Annexure-2, refusal to grant input tax credit on the inter-state purchases, reversal of grant input tax credit on the ground that the seller has not declared the transaction, ITC claimed in respect of transaction with dealers when adopted for composition payment of tax, reversal of input tax credit under section 19(5)(c) of the TN VAT Act, reversal of input tax credit under section 19(4) of the Act, exempted input tax credit brought forward from Form No.1, Annexure-1, reversal input tax credit under section 19(2)(v), rejection of claim for exemption ineligible ITC claim and penalty under section 63A.

4. The revision of assessment commenced with the issuance of individual notice dated 31.3.2017 for all the five assessment years for which the petitioner submitted individual replies vide replies dated 31.5.2017. For the purpose of illustration, the contents of the reply for the assessment year 2010-11 was taken up for consideration.

5. With regard to the claim for exemption, which was proposed to be disallowed, and zero-rated sales, the petitioner sought for grant of further time to submit the details with regard to reversal of input tax credit.

6. On the ground of mismatch, the petitioner contended that they should be furnished with the sellers invoices and sellers TIN numbers in order to enable them to file effective objections.

7. The petitioner relied upon a decision of this court in W.P.No.105/2016 etc., batch, dated 01.03.2017 in case of M/s.J.K.M. Graphics Solutions Private Limited and prayed that the directions issued in the said case may be followed.

8. Reply in respect of other issues were submitted.

9. After receipt of the reply dated 31.5.2017, a notice dated 07.06.2017 was issued to the petitioner enclosing screen shot of the details of invoice/date-wise details of the earlier sellers. On receipt of those notices, the petitioner sent a reply on 30.06.2017 stating that the entire details have not been furnished and whatever has been furnished and whatever is required to be furnished were stated in a tabulated form along with reply dated 30.06.2017, wherever invoice numbers are not available, wherever transaction done by the petitioner and reported in their return was not accounted for by the other end dealers, and the transactions pertaining to SCZ sales/exempted sales/zero-rated sales. The petitioner also enclosed a copy of the order dated 16.10.2006 of the Development Commissioner in favour of M/s.HCL Technology Limited pointing them as co-developer as a SEZ. On receipt of the reply, a notice of personal hearing appears to have been sent to the petitioner though received by them, the petitioner did not attend the personal hearing and the impugned assessment orders came to be passed by the respondent.

10. The learned counsel for the petitioner contended that without furnishing full details as pointed out by them in the reply dated 30.06.2017, the petitioner was unable to give an effective reply and the matter may be remanded to the Assessing Authority for reconsideration on merits.

11. The learned Government Advocate submitted that sufficient opportunities were granted to the petitioner and three notices have been issued and in spite of an opportunity of personal hearing having been granted, the petitioner did not avail the same and therefore, the petitioner should be directed to file an appeal as against the impugned assessment orders, if they are aggrieved over the same.

12. The learned counsel by placing reliance on the decision of the Hon'ble Supreme Court in the case of Authorised Officer, State Bank of Travancore and another v. Mathew K.C. in Civil Appeal No.1281 of 2018, dated 30.01.2018, submitted that writ petition should not be entertained.

13. After elaborately hearing the learned counsel for the parties and carefully perusing the materials on record, this court finds that the petitioner had been granted opportunity by the Assessing Officer to put-forth their case. Needless to state that an opportunity to be an effective opportunity, the dealer is required to be provided with necessary particulars sought for by them.

14. Admittedly, while issuing the 1st show cause notice dated 31.3.2017, the entire details with regard to mismatch issue were not furnished. When the petitioner pointed out the same vide their reply dated 31.05.2017, the respondent, along with notice dated 07.06.2017, provided the details which were culled out in the screen shot. While admitting the receipt of the details, pointed out that in respect of certain transactions, they require further details, as such, invoice numbers, TIN numbers, etc.

15. In my considered view, the authority could have furnished those details wherever the details were missing according to the petitioner and for easy reference the petitioner has mentioned those details, which they require in tabulated form for each of the assessment years. If that had been furnished, then, the chances are that a portion of the demand atleast could not have been reduced. However, with regard to the details, which were available and sought to be reconciled by the petitioner, an opportunity could have been granted. Therefore, so far as the mismatch issue is concerned, this court is of the view that one more opportunity should be granted to the petitioner enabling them to receive all the details and reconcile the transaction as far as possible. Similarly, with regard to zero-rated sales/SEZ sales/exempted sales, the only reason for refusing to consider the explanation given by the petitioner is on the ground that original invoices were not produced. It may be true that the petitioner did not avail the opportunity of personal hearing. However, I find that on such technical ground, the input tax credit should not be reversed as non- production of original invoices can by only a technical violation. Thus, only in respect of these two issues, this court is inclined to remand the matter to the authority for consideration. With regard to other issues, if the petitioner is aggrieved, they have to file an appeal before the Appellate Authority.

16. As held by the Hon'ble Supreme Court in Mathews case (cited supra), the discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as held by the Hon'ble Supreme Court in Commissioner of Income Tax and others v. Chhabil Dass Agarwal reported in 2014(1) SCC 603. One such exception which has been laid down is when an order has been passed in violation of principles of natural justice.

17. As pointed out earlier, the non-furnishing of the entire details as sought for by the petitioner has resulted in non submission of an effective objection or an effective reconciliation of the mismatch issue by the petitioner. The equally non-production of the original invoices being an technical defect should not have been the sole reason for disallowing the SEZ sales/zero-rated sales and exempted sales. Thus, I find that on these two grounds, the present cases falls within the exception carved out by the Hon'ble Supreme court as mentioned above.

18. In the result, the writ petitions are partly allowed and the finding rendered by the respondent in the impugned order with regard to mismatch issue and with regard to disallowance of SEZ sales/zero-rated sales and exempted sales are set aside for being reconsidered afresh. The respondent shall furnish the details sought for by the petitioner in their reply dated 30.06.2017 and within seven days time the petitioner shall submit their reply and thereafter, the respondent shall fix a date for personal hearing in which, the petitioner shall be directed to furnish all

the records including the original invoices in respect of SEZ/zero-rated and exempted sales and redo the assessment in accordance with law, on these issues. In respect of the other issues, the petitioner is at liberty to file an appeal before the Appellate Authority and in the light of the orders passed by this court the petitioner is granted 15 days of time from the date of receipt of a copy of this order to file appeal before the Appellate Authority and if the same is filed, the Appellate Authority shall entertain the appeal without rejecting the same on the ground of limitation.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner
Kotturpuram Assessment Circle
No.46 Pasumpon Muthuramalingam Salai
Chennai - 600 028

copy to:

The Section Officer,
ER Section,
High Court, Madras.(for return of original impugned order dated 14/12/2017)

+ 5 cc to Mr.N.Murali Advocate,SR.26628

+ 1 cc to The Special Govt.Pleader, SR.26883

W.P.Nos.3105 to 3109 of 2018 &
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ad(co)
nr 27/04/2018