IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM

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

W.P.No.4427 of 2018 &
W.M.P. Nos.5426 & 5427 of 2018

M/s.Alkraft Thermo Technologies Pvt. Ltd.
Rep by its Chief Financial Officer
P.Sirajudeen
35-A and B/1, Ambattur Industrial Estate
Chennai - 600 058 ... Petitioner

vs.

The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle
No. 127, 2nd Floor
Yadhaval Street, Padi
Chennai - 600 050 ...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 25.01.2018 bearing reference TIN 33071321193/ 2014-15 passed by the respondent for the Assessment Year 2014-15 passed by the respondent for the Assessment Year 2014-15 under TNVAT Act, 2006 and quash the same as far as the demand concerned under Section 19 (5) (c) & under Section 19 (2) (v) of TNVAT Act, 2006 and to direct the respondent to pass a revised assessment order for the Assessment Year 2014-15 for the demand under Section 19(5) C & under Section 19 (2) (v) under TNVAT Act 2006 after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.S.R.Sankareshwaran

For Respondent : Ms.G.Dhanamadhri
Govt. Advocate (T)

ORDER

Heard Mr.S.R.Sankareshwaran, learned counsel appearing for the petitioner and Mr.Ms.G.Dhanamadhri, learned Government Advocate for the respondents.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Central Sales Tax Act, 1956 and the Tamil Nadu Value Added Tax Act, 2006 has filed this writ petition challenging the Assessment Order passed by the respondent for the Assessment year 2014-15 under the TN VAT Act.

3. The issues arise for consideration, viz., (i) Reversal of input tax credit levied under section 19 (5) (c) of the Tamil Nadu Value Added Tax Act, 2006 and (ii) Reversal of input tax credit levied under section 19 (2) (v) of the Act.

4. So far as the 1st issue is concerned, the respondent has rejected the case of the petitioner on the ground that they have not filed any documents to establish that they have effected sales to defence establishments.

5. The learned counsel appearing for the petitioner pointed that sales have been effected and all the documents are available with the petitioner and in fact, during the course of personal hearing they had filed notes and submissions on 28.07.2017. However, without taking into consideration of the same, the impugned order has been passed.

6. So far as the 2nd issue is concerned, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of Everest Industries Limited Vs. State of Tamil Nadu [reported in (2017) 100 VST 158] . However, as against the same, the State has filed an appeal and the matter is now pending before the Division Bench.

7. Considering the facts and circumstances of the case, this court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer only with regard to the issue pertaining to section 19 (5) (c) of the Act and in respect of other issue, the petitioner is granted opportunity to file an appeal before the Appellate Authority.

8. Accordingly, the Writ Petition is partly allowed and the finding rendered by the Assessing Officer under the reversal of input tax credit levied under section 19(5)(c) is set aside and the matter is remanded to the Assessing Officer for fresh consideration, who shall afford an opportunity of personal hearing, peruse the documents produced by the petitioner and redo the assessment under the said Act. In respect of other issue, viz., reversal of input tax credit levied under section 19 (2) (v), the petitioner is granted 30 days time from the date of receipt of a copy of this order to file an appeal before the Appellate Deputy Commissioner, Commercial Taxes , Chennai South. On receipt of the appeal

petition, the Appellate Authority is directed to entertain the appeal without rejecting the same on the ground of limitation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

Rj

To

1.The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle
No. 127, 2nd Floor
Yadhaval Street, Padi
Chennai - 600 050

2.The Appellate Deputy Commissioner,
Commercial Taxes, Chennai South.

+1cc to Mr.R.Anish Kumar, Advocate SR.No.26216
+1cc to Special Government Pleader(Taxes) SR.No.26880

W.P.No.4427 of 2018 &
W.M.P. Nos.5426 & 5427 of 2018

KJI(CO)
GN(23/04/2018)