

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

W.P.Nos.6559 & 6560 of 2018 and
W.M.P.Nos.8151 to 8154 of 2018

M/s.Concepts and Devices,
rep by its Proprietor
M.Fuaad Musvee,
47, Greams Road, II Floor,
Chennai - 6.

... Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (ST)
Valluvarkottam Assessment Circle,
10, Palaniyappa Maligai,
Greams Road,
Chennai - 6.

... Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India to issue Writs of certiorari to call for the records of the respondent in his proceedings in TIN:33191500383/2010-11, 2011-12 dated 28.02.2018 in so far as the reversal of ITC relating to sales made to SEZ is concerned and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
(in both W.Ps.)

For Respondents : Mrs.G.Dhanamadhri
(in both W.Ps.) Government Advocate (Tax)

C O M M O N O R D E R

By consent, the main Writ Petitions are taken up for disposal at the admission stage itself.

2.The petitioner has filed the above Writ Petitions to issue Writs of certiorari to call for the records of the respondent in his proceedings dated 28.02.2018 for the assessment years 2010-11 & 2011-12 in so far as the reversal of ITC relating to sales made to SEZ is concerned and quash the same.

3.It is the case of the petitioner that the respondent had issued a notice stating that the petitioner has reported exempted turnover of Rs.38,62,625/- for the assessment year 2010-11 and requested him to produce the documents in proof of the claim of exemption. The petitioner filed the reply dated 12.12.2017 by enclosing the certificates issued by SEZ dealers in proof of exemption claimed for the turnover of Rs.31,97,465/-. The petitioner also filed details of labour charges for Rs.6,54,520/- in proof of exemption claimed. The respondent verified the certificates issued by SEZ dealers and the details for labour charges and granted exemption on the above turnover of Rs.31,97,465/- and Rs.6,54,520/- respectively. The respondent has stated that the sales have been effected to dealers in Special Economic Zones, but the corresponding ITC has not been made. The respondent has not made any proposal to reverse the ITC on the sales made to SEZ dealers in the notice dated 25.10.2017. The respondent has also not pointed out the order passed by this Court in W.P.No.21453 of 2008 dated 09.01.2015 and has not granted an opportunity to the petitioner to give reply for the said proposal. However, in the impugned order, the respondent has reversed the ITC of Rs.2,00,831/- without giving an opportunity to the petitioner to show cause against such order. According to the petitioner, it is violative of principles of natural justice.

4.Mrs.G.Dhanamadhri, learned Government Advocate (Tax) taking notice for the respondent submitted that since the respondent has not made any proposal to reverse the ITC in the notice, the matter may be remitted back to the respondent for issuing fresh notice to the petitioner and that the respondent may be directed to re-do the assessment.

5.In view of the submissions made by the learned counsel on either side, since the respondent has not made any proposal to reverse the ITC to the petitioner, it would be appropriate to set aside the orders dated 28.02.2018 passed by the respondent and remit the matter back to the respondent. Accordingly, the impugned orders are set aside. The matters are remitted back to the respondent for fresh consideration. The respondent is directed to issue fresh notice to the petitioner and after

receiving the reply from the petitioner, the respondent is directed to decide the matter afresh, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner.

6. With these observations, the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

va

To

The Assistant Commissioner (ST)
Valluvarkottam Assessment Circle,
10, Palaniyappa Maligai,
Greens Road, Chennai - 6.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.21640
+1cc to the Special Government Pleader, S.R.No.22498

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VD(CO)
CS/09/04/18

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