BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.11.2018

CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)Nos.11618, 11619 & 11621 of 2017
and
W.M.P.(MD)Nos.8943, 8944 & 8946 of 2017

Thermo Solutions (India) Private Ltd.,
Represented by its Director,
V.Suresh Kannan ...Petitioner in all W.P.s

Vs.

1.The Commissioner of Commercial Taxes,
O/o.the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Commercial Tax Officer-V,
Dindigul V Assessment Circle,
Commercial Taxes Buildings,
Sub-Collector's Office Road,
Dindigul – 624 001. ...Respondents in all W.Ps

COMMON PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings of the second respondent in TIN 33495381964/2011-12, TIN 33495381964/2012-13, TIN 33495381964/2014-15, dated 15.10.2015 and quash the same and to consequently direct the 2nd Respondent to re-do the assessment afresh after giving adquate opportunity to the petitioner.

For Petitioner (In all W.Ps.)	:	Mr.B.Rooban
For Respondents (In all W.Ps.)	:	Mr.Aayiram K.Selvakumar Additional Government Pleader

O R D E R

In all these writ petitions the petitioner is one and the same. The assessment years alone are different. The second respondent issued pre-assessment notice. The petitioner did not offer his reply. Therefore, the impugned order came to be passed. Contending that the impugned orders have been passed without conforming to the usual procedure, these writ petitions have been argued.

2.The learned counsel appearing for the writ petitioner pointed out that even at the time of admission, the petitioner was directed to pay 50% of the difference in disputed tax. The said condition has been complied with. Taking note of the compliance of the order passed by this Court, I am inclined to set aside the orders impugned in these writ petitions.

3.The second respondent official is present in person before me. He pointed out that the purchaser dealer must show proof of having paid the selling dealer either in cash or through on-line mode and only thereafter, the second respondent can undertake an enquiry with other end dealer.

4.The learned counsel appearing for the petitioner submitted that all that the petitioner needs to submit are the original tax invoice duly filled and signed and issued by the other end dealer. He placed reliance on Section 19(10)(a), which reads as follows:

> *The registered dealer shall not claim input tax credit until the dealer receives an original Tax Invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.*

5.I am of the view that the second respondent is not debarred from calling upon the petitioner to furnish proof of having made payment. This power of the second respondent is traceable to Section 17 (2) of TNVAT Act, which reads as follows:

> *For the purpose of claim of input tax credit, the burden of proving such claim shall lie on such dealer.*

6.The orders impugned in these writ petitions are set aside. The matters are remitted back to the file of the second respondent to pass orders afresh and in accordance with law, after providing opportunity of personal hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns / Ls/skm

To

1.The Commissioner of Commercial Taxes,
O/o.the Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
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2.The Commercial Tax Officer V
Dindigul V Assessment Circle,
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