IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.16719, 16726, 16727, 16728, 16729, 16735, 16737 and 16738 of 2019 &
W.M.P.Nos.16333, 16338, 16339, 16340, 16343, 16344, 16347, 16348 of 2019

W.P.No.16719 of 2019

M/s.ARS Metals Pvt. Ltd.,
Rep. By its Deputy Director Mr.N.Prabu
No.D-109, 2nd and 4th Floor
L B R Complex
Anna Nagar East
Chennai - 600 102 ... Petitioner in all WPs

Vs.

Sales Tax Officer
Amaindakari Assessment Circle
Anna Nagar Circle
Chennai - 600 102 ... Respondent in all WPs

Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the orders passed by the respondent in TIN/33831024537/2007-08 dated 30.04.2019 (served on 03.05.2019) TIN/33831024537/2008-09 dated 15/4/2019 (Served on 3/5/2019), TIN/33831024537/2009-10 dated 15/4/2019 (Served on 3/5/2019) TIN/33831024537/2010-11 dated 19/4/2019 (Served on 3/5/2019), TIN/33831024537/2011-12 dated 19/4/2019(Served on 3/5/2019), TIN/33831024537/2012-13 dated 15/4/2019(Served on 3/5/2019) TIN/33831024537/2013-14 dated 24/4/2019 (Served on 3/5/2019), TIN/33831024537/2014-15 dated 15/4/2019 (Served on 3/5/2019) respectively , and the quash the same as contrary to principles of natural justice, opposed to law, arbitrary and unsustainable.

For Petitioner : Mr.M.A.Mudi Mannan
in all W.Ps

For Respondent : Mr.M.Hariharan
Additional Government Pleader
for Respondent in all W.Ps

O R D E R

This common order will dispose of these eight writ petitions. The parties are the same in all the eight writ petitions.

2.Mr.Mudimannan, learned counsel on record for writ petitioner in all the eight writ petitions is before this Court. Mr.M.Hariharan, learned Additional Government Pleader, accepts notice on behalf of sole respondent in all the eight writ petitions.

3. These writ petitions are listed under the caption 'FOR ADMISSION' in the motion list today. However, with the consent of learned counsel on both sides, the main writ petitions itself are taken up, heard out and are being disposed of.

4. This Court is informed without any disputation or disagreement that the factual matrix qua these eight writ petitions are common and core / central issue is the same in all the eight writ petitions. This has impelled this Court to pass a common order.

5. To set out this with specificity, this Court is informed without any disputation that these writ petitions pertain to revised assessment orders passed by the respondent under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity). There are eight different assessment orders for eight successive assessment years and those eight successive assessment years are 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15. This Court is informed that only the assessment years and the numerical values change, but factual matrix is common and as already mentioned supra, the core issue/central theme is same in all these eight writ petitions.

6. The writ petitioner submits that it is a manufacturer of TMT bars and steel products with valid registrations under TNVAT Act and 'Central Sales Tax Act' ('CST Act'). Based on an inspection report, the respondent issued a notice dated 08.03.2019 proposing to revise the deemed assessments already made under Sections 22(2) of TNVAT Act based on monthly returns filed by the writ petitioner assessee. There was also a proposal to levy penalty under Section 27 of TNVAT Act and the writ petitioner was called upon to file their objections.

7. In response to this notice dated 08.03.2019, writ petitioner assessee filed objections dated 15.03.2019.

8. To be noted, post objections, the entire matter got narrowed down to only one issue and that one issue is quantum of loss i.e., burning loss, namely scarp in the manufacturing process.

9. The most relevant part of the objection has been extracted and reproduced in the impugned orders and the same reads as follows:

> 'Further, the dealers have stated that the enforcement authorities are not justified in adopting uniform percentage as burning loss and calling upon the dealer to reverse the input tax credit availed to that extent. The actual loss was very less. We request you to embark a fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which the tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and arrive at actual burning loss and render justice.'

10.The aforesaid objection has been met in the impugned order in the following manner:

> '..Further, the dealers have not furnished any quantitative details to substantiate the burning loss. In the absence of these details it has been construed that there is a burning loss at 1% in the process of manufacturing, logically...'

11. In the light of aforesaid narrative, the short and sole issue before this Court now is, reversal of 'Input Tax Credit' ('ITC' for brevity) at 1% on aforesaid burning loss in the manufacturing process particularly in the light of Section 19(9)(iii) of TNVAT Act and as to whether this is correct. According to writ petitioner uniform 1% is incorrect.

12. In support of the aforesaid submission, learned counsel for writ petitioner pressed into service a judgment made by a Hon'ble Single Judge of this Court being Interfit Techno Products Ltd., Vs. Principal Secretary/Commissioner of Commercial Taxes reported in [2015] 01 VST 389 (Mad). The most relevant part of the said judgment is contained in sub-paragraph (3) of the operative portion and the same reads as follows:

> '(3)For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the assessing authority that claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the assessing

authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in Section 19 of the VAT Act. The assessing officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any of the restrictions and conditions contained in section 19 and in particular Section 19 (9) of the VAT Act.'

(Underlining made by this Court to supply emphasis and highlight).

13. In response to the aforesaid submission of the learned counsel for writ petitioner, learned Revenue counsel i.e., State counsel, submitted that the writ petitioner has not furnished any quantitative details to substantiate the burning loss and therefore, in the absence of quantitative details from the writ petitioner, there is no way by which the respondent Assessing Officer could have embarked upon the exercise of ascertaining the quantum of loss i.e, a fact finding exercise, based on Interfit Techno principle.

14. In response to this, learned counsel for writ petitioner submitted that writ petitioner was ready with quantitative details, but the same could not be produced as impugned orders came to be passed without a personal hearing.

15. This takes us to the personal hearing aspect of the matter. A perusal of the aforesaid revision notice dated 08.03.2019 brings to light that the Assessing Authority has made provision for personal hearing. This is articulated in the last paragraph of proposed revision notice and the same reads as follows:

' The dealers are requested to file their objections to the above proposals and also granted personal hearing and appear before the undersigned on any working day within 15 days from the date of receipt of this notice and produce the records and evidences, if no reply is received within 15 days, order will be passed without further notice.'

16. Adverting to the aforesaid paragraph in the impugned orders, learned counsel for writ petitioner submitted that another Hon'ble Judge of this Court in Order dated 24.04.2019 in W.P.Nos.12126 & 12130 of 2019 & W.M.P.Nos.12405 and 12408 of 2019 therein, while dealing with a similar matter had held that this would not be a effective personal hearing opportunity and

that opportunity of personal hearing should be given by fixing the date and time and not by indicating a range of dates. It is not in dispute that this interim order was not carried in appeal by way of an intra-court appeal. In other words, this interim order is now operating. To buttress and bolster his submission regarding personal hearing, learned counsel for writ petitioner also drew the attention of this Court to a circular issued by the Office of the Principal Secretary and Commissioner of Commercial Taxes. This circular is Circular No.7/14 dated 03.02.2014. Most relevant part of this Circular No.7/14 is under the caption 'passing of orders' and the most relevant portion is a(iii), which reads as follows:

> 'a) Passing of orders:
>
> i) .....
>
> ii).....
>
> iii) As the provision in the TNVAT Act stipulates the conditions or granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.'

17. There is no disputation or disagreement before this Court that aforesaid Circular No.7/14 is operating and binding on the respondent. If Circular No.7/14 is operating, in the light of the aforesaid order dated 24.04.2019, made by another Hon'ble Judge, it is necessary to give a personal hearing to the writ petitioner giving the date, time and venue with specificity and clarity.

18. Learned counsel for writ petitioner, on instructions, submits that if a personal hearing is given giving the date, time and venue with specificity and clarity, the writ petitioner company's duly authorised representative or advocate will go before the respondent and furnish quantitative details for all the eight assessment years regarding burning loss, referred to supra.

19. In the light of narrative thus far, the following order is passed:

> a) All eight impugned orders dated 30.04.2019, 15.04.2019, 15.04.2019, 19.04.2019, 19.04.2019, 15.04.2019, 24.04.2019 and 15.04.2019 bearing reference Nos.TIN/33831024537/2007-08, TIN/33831024537/ 2008-09, TIN/33831024537/2009-10, TIN/33831024537/2010-11, TIN/33831024537 /2011-12, TIN/33831024537/2012-13, TIN/33831024 537/2013-14 and TIN/33831024537/2014-15 respectively, relatable to Assessment Years, 2007-08 to 2014-15 are set aside. To be noted, the impugned orders are set aside solely on the ground of personal hearing not being afforded

in the manner alluded to supra in this order. In other words, this Court does not express any view on the merits of the matter.

b) With the consent of both sides, personal hearing is now fixed on 05.07.2019 (Friday) at 12 Noon and the venue will be the office of the respondent being No.F-50, Ist Avenue, Annanagar East, Chennai - 102.

c) Writ petitioner undertakes to avail the aforesaid personal hearing on the aforesaid date, time and venue. If the writ petitioner (authorised representative / Advocate) does not appear before the Officer, on aforesaid date, time and venue, the impugned orders will stand revived.

d) If the writ petitioner avails the personal hearing on the aforesaid date, time and venue and if quantitative details qua burning loss are produced, the same shall be considered by the Assessing Officer and fresh assessment orders shall be passed in accordance with law and more particularly bearing in mind Interfit Techno Products principle of this Court.

e) After the personal hearing, the aforesaid exercise of redoing the assessment should be completed by the respondent within six weeks from the date of personal hearing.

f) On the assessment being redone in the aforesaid manner, redone assessment order shall be served on the writ petitioner assessee in a manner known to law under due acknowledgement within seven working days from the date of redone assessment.

All the eight writ petitions are disposed of with the aforesaid directions. There shall be no order as to costs. Consequently, all eight miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Sales Tax Officer
Amaindakari Assessment Circle
Anna Nagar Circle
Chennai - 600 102.

+1cc to Mr.K.Jayachandran, Advocate Sr.50007
+1cc to the Special Government Pleader Sr.50815

W.P.Nos.16719, 16726, 16727, 16728, 16729, 16735, 16737 and 16738 of 2019 &
W.M.P.Nos.16333, 16338, 16339, 16340, 16343, 16344, 16347, 16348 of 2019

ss[co]
srg 20/08/2019