IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.13514 to 13518 of 2016
and
W.M.P.Nos.11855 of 11859 of 2016

M/s.Chemplast Sanmar Ltd.,
Rep., by its Executive Vice President (Finance)
Veerakhalpudur,
Raman Nagar Post, Mettur Dam 636 403,
Salem District. …Petitioner in all W.Ps.

.Vs.

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Mettur Dam. …Respondent in all W.Ps.

Prayers in W.P.Nos.13514 to 13516 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent and quash the impugned proceedings TIN 33873241159/2010-11, 2011-12, 2012-13 respectively dated 17.03.2016, by which the respondent reversed the input tax credit pertaining to capital goods without following the order of the First Appellate Authority for an earlier period which has become final and thus violative of the law laid down by the Supreme Court in the case of Kamlakshmi Financial Corporation Ltd. (1991) 55 ELT 433.

Prayers in W.P.Nos.13517 & 13518 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent and quash the impugned proceedings TIN 33873241159/2013-14 & 2014-15 respectively dated 17.03.2016, by which the respondent has reversed the input tax credit by placing reliance upon the amendment brought about to Section 19(2) of the Tamil Nadu Value Added Tax Act (VAT Act) by Tamil Nadu Act 28 of 2013 effective 08.11.2013 which is not applicable to manufacturers and has also reversed the input tax credit pertaining to capital goods without following the order of the First Appellate Authority for an earlier period which has become final and thus violative of the law laid down by the Supreme Court in the case of Kamlakshmi Financial Corporation Ltd. (1991) 55 ELT 433.

For Petitioner : Mrs.Radhika Chandra Sekhar
(in all WPs)
For Respondent : Mr.R.Swarnavel
(in all Wps) Government Advocate

COMMON ORDER

Today, the matter is called through Video Conferencing. By consent of both the parties, all these Writ Petitions are taken up for final disposal.

2. The common issue involved in all these Writ Petitions is that the impugned proceedings/notices are made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforement Wing or from ISIC Authorities. Among other grounds, the petitioner herein has raised a ground that the Assessing Officer, who is a Quasi Judicial Authority, has not independently applied his mind while dealing with the impugned proceedings, but had adopted the reports and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

3. This ground raised by the petitioner has been upheld by this Court in various Writ Petitions holding that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which such a view has been taken are in the cases of Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another reported in 2006 (146) STC 642 (MAD) and Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri and another reported in 2015 (81) VST 560 (MAD).

4. Such a ratio laid down by this Court in all the above Writ Petitions stand good till date and in these background, the Commissioner of State Tax, Chennai had issued Circular No.3 dated 18.01.2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. The relevant portion of the Circular No.3 dated 18.01.2019 reads thus:-

"b) If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the proposals, and reasons for the same to be recorded."

Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

5. In view of Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, the impugned proceedings in all these Writ Petitions, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ISIC, are set aside and consequently, the matters are remanded back to the Assessing Officer. The Assessees are granted liberty to file their objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall extend due opportunity of personal hearing to the Assessees/ Representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings independently and not being influenced by any of the reports or proposals of the Enforcement/ISIC Authorities. Such an exercise shall be completed atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the Assessing Officer shall commence the assessment proceedings, after the expiry of the 30 days indicated above.

6. With the above observations and directions, all these Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Omalur Assessment Circle,
Mettur Dam.

+5cc to Mr.K.Vaitheeswaran, Advocate, Sr.No.28269

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