IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.16809 to 16811 of 2013
and
MP.Nos.1 & 1 of 2013

Delphi TVS Diesel Systems Ltd.,
Represented by its Company Secretary,
M.N.Subramaniyam
... Petitioner in all WPs.

Vs.

The Assistant Commissioner (CT)
Anna Salai 2 Assessment Circle,
Chennai - 600 006 ... Respondent in all WPs.

WP.No.16809 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files of the respondent herein in CST 31928/2008-09 dated 7.6.2013 and quash the same.

WP.No.16810 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the respondent herein in CST No.31928/2010-11 dated 6.5.2013 and to quash the same with direction to consider the claim of rejection not considered in the monthly return for Rs.2,63,97,300/- made in their letter dated 19.2.2013.

WP.No.16811 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the respondent herein in CST 31928/2008-09 dated 5.3.2012 and quash the same with direction to consider the claim of volume discount and claim of sales rejection/return with 14 debit notes filed and acknowledged by the respondent on 10.02.2012.

For Petitioner : Mr.N.Inbarajan, in all WPs.

For Respondent : Mr.A.N.R.Prathap, GA (T) in all WPs.

COMMON ORDER

According to the petitioner, they are engaged in the manufacture and sale of fuel injection pump and parts in their factory at Mannur. They are registered dealer on the file of the respondent both under the TNVAT Act, 2006 as well as the CST Act, 1956. For the assessment year 2008-09, the petitioner filed their returns along with declaration forms in respect of direct inter-State sales by them, apart from the details relating to export sales, for which, exemption was claimed. However, the respondent passed the assessment order on 05.03.2012, without considering the details furnished by the petitioner, which were acknowledged by the respondent on 10.02.2012. On the receipt of the assessment order, the petitioner sent communications dated 12.04.2012 and 05.04.2013 enclosing 'C' forms and reconciliation summary, to the respondent requesting to pass revised order, after considering their claim of deduction in respect of discount and sales return/rejection. Vide revised order dated 07.06.2013, the respondent accepted the declaration forms furnished by the petitioner and levied the concessional rate of tax on the turnovers covered by the declaration forms. However, they rejected the claim of the petitioner seeking deduction in respect of discount and sales return/rejection. Similarly, in respect of the assessment year 2010-11, the respondent passed the order dated 06.05.2013, without granting time for furnishing declaration forms and without considering the claim of deduction with respect to sales return/rejection. Feeling aggrieved, the petitioner has filed the present writ petitions, to set aside the assessment order and revised order for the year 2008-09 and the assessment order relating to the year 2010-11 and consequential direction to the respondent to consider the claim of deduction with respect to discount and sales return/rejection.

2.The learned counsel for the petitioner submitted that there is a liability under the CST Act only insofar as it relates to completed sale transactions; the return/rejection of the goods is eligible for deduction as provided under Section 2 (j) of the CST Act r/w Rule 10(6) of the TNVAT Rules, 2007 and the discount is excluded as sale price under Section 2(h) and it cannot form part of the turnover under Section 2(j) of the Act; and hence, non-consideration of the claim of the petitioner seeking deduction with respect to discount and sales return/rejection vitiates the proceedings. The learned counsel further submitted that without providing sufficient opportunity to the petitioner to put forth their case by furnishing all the relevant documents, the respondent has passed the orders impugned herein and hence, the same are liable to be aside aside.

3.On the other hand, the learned Government Advocate (T) appearing for the respondent submitted that since the petitioner has not furnished the relevant documents with regard to their claim for the assessment years in question at the time of assessment, the respondent has no other option except to pass the orders impugned herein, on the basis of the available records.

4.Considering the facts and circumstances of the case and having regard to the submissions made on either side, this Court, in order to provide an opportunity to the petitioner, directs them to file a fresh representation enclosing all the documentary evidence with respect to their claim, before the respondent within a period of two weeks from the date of receipt of a copy of this order, by treating the orders impugned herein as show cause notices. On such filing, the respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of four weeks thereafter.

5.All the writ petitions stand disposed of in the above terms. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Anna Salai 2 Assessment Circle,
Chennai - 600 006.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No. 20420
+1cc to the Special Government Pleader(Taxes), S.R.No. 21795

W.P.Nos.16809 to 16811 of 2013
and
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AK(CO)
GN(26/06/2020)