IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:12.02.2020

Pronounced on:14.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 42543 to 42552 of 2016 & 42569 to 42573 of 2016
and
W.M.P. Nos. 36503 to 36507 & 36480 to 36489 of 2016

MRF Ltd,
No. 124, Greams Road,
Chennai - 600 006.
Represented by General Manager - Sales Tax,
Mr.Swarup Kumar Patnaik
...Petitioner in all W.Ps

Vs

Deputy Commissioner (CT)-III,
Large Taxpayers Unit,
Dugar Towers, No.34,
Marshal Road, 5th Floor,
Chennai - 600 008. ...Respondent in all W.Ps

Prayer in W.P. No. 42543 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2006-2007 dated 28.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42569 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2011-2012 dated 28.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42570 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2012-2013 dated 28.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42571 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2013-2014 dated 31.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42572 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2014-2015 dated 31.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42544 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of prohibition, prohibiting the respondent in proceeding in respect to the notice bearing TIN/33590540639/2006-2007 dated 28.07.2016.

Prayer in W.P. No. 42545 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2007-2008 dated 28.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42546 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of prohibition, prohibiting the respondent in proceeding in respect to the notice bearing TIN/33590540639/2007-2008 dated 28.07.2016.

Prayer in W.P. No. 42547 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2008-2009 dated 28.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42548 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of prohibition, prohibiting the respondent in proceeding in respect to the notice bearing TIN/33590540639/2008-2009 dated 28.07.2016.

Prayer in W.P. No. 42549 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2009-2010 dated 28.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42550 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of prohibition, prohibiting the respondent in proceeding in respect to the notice bearing TIN/33590540639/2009-2010 dated 28.07.2016.

Prayer in W.P. No. 42551 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of prohibition, prohibiting the respondent in proceeding in respect to the notice bearing TIN/33590540639/2010-2011 dated 28.07.2016.

Prayer in W.P. No. 42552 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2010-2011 dated 28.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

Prayer in W.P. No. 42569 to 42573 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in TIN/33590540639/2011-2012 dated 28.10.2016, TIN/33590540639/2012-2013 dated 28.10.2016, TIN/33590540639/2013-2014 dated 31.10.2016, TIN/33590540639/2014-2015 dated 31.10.2016, TIN/33590540639/2015-2016 dated 31.10.2016 and the consequential Notice of Assessment and Demand in Form O and Notice of penalty in Form RR and quashing the same.

For Petitioner (in all W.Ps) : Mr. M.V.Swaroop

For Respondents (in all W.Ps) : Mr. R. Swarnavel
Government Advocate

COMMON ORDER

Heard the learned counsel for the Petitioner and the learned Government Advocate for the Respondents. By this common order, all the Writ Petitions are being disposed.

2. In the below mentioned Writ Petitions, the petitioner has prayed for a Writ of Prohibition to the respondent from proceedings further with the following notices.
Table-1

Sl. No	W.P.No	Impugned Notice No	Dated	Assessment Year
1	W.P.No.42544/2016	TIN/33590540639/2006-2007	28.07.2016	2006-07
2	W.P.No.42546/2016	TIN/33590540639/2007-2008	28.07.2016	2007-08
3	W.P.No.42548/2016	TIN/33590540639/2008-2009	28.07.2016	2008-09
4	W.P.No.42550/2016	TIN/33590540639/2009-2010	28.10.2016	2009-10
5	W.P.No.42551/2016	TIN/33590540639/2010-2011	28.10.2016	2010-11

3.In the following Writ Petitions, the petitioner has challenged the impugned orders passed for the above mentioned Assessment Years and for the Assessment Years 11-12 to Assessment Years 2015 to 2016 on the ground that the orders have been passed in variance with the demand proposed in the notices:- Table-2

Sl. No	W.P.No	Impugned Notice No	Dated	Assessment Year
6	W.P.No.42543/2016	TIN/33590540639/2006-2007	28.10.2016	2006-07
7	W.P.No.42545/2016	TIN/33590540639/2007-2008	28.10.2016	2007-08
8	W.P.No.42547/2016	TIN/33590540639/2008-2009	28.10.2016	2008-09
9	W.P.No.42549/2016	TIN/33590540639/2009-2010	28.10.2016	2009-10
10	W.P.No.42552/2016	TIN/33590540639/2010-2011	28.10.2016	2010-11
11	W.P.No.42569/2016	TIN/33590540639/2011-2012	28.10.2016	2011-12
12	W.P.No.42570/2016	TIN/33590540639/2012-2013	28.10.2016	2012-13
13	W.P.No.42571/2016	TIN/33590540639/2013-2014	31.10.2016	2013-14
14	W.P.No.42572/2016	TIN/33590540639/2014-2015	31.10.2016	2014-15
15	W.P.No.42573/2016	TIN/33590540639/2015-2016	31.10.2016	2015-16

4. Petitioner's Head Office was inspected by the Enforcement Wing of the Commercial Tax Department on 07.01.2016. During the inspection, the Petitioner was called upon to furnish the documents pertaining to the Assessment Years 2006-2007 to 2010-2011.

5. The Petitioner however failed to produce the same and stated that the petitioner was unable to produce the documents as they are old records and in any event it was not required to maintain the documents beyond a period of 5/6 years in terms of Section 64 of the TNVAT Act, 2006 for the Assessment Year 2006 07 to 2010-11.

6. As far as the documents for the remaining years were concerned, it is the contention of the petitioner that the petitioner has four plants within Tamil Nadu and each of the plants maintain separate records and therefore it was open for the respondents to call for and collect the information directly from the respective plants.

7. Since the petitioner failed to furnish the required documents, the petitioner was issued with the 10 different Show Cause Notices dated 28.07.2016 for the Assessment Years 2006-2007 to 2015-2016. Five of these notices are subject matter of the Writ Petitions in Table-1.

8. 10 revision notices culminated in 10 impugned Order dated 28.10.2016 and 31.10.2016 which have been impugned in W.P Nos. 42550 of 2016 as detailed in Table-2.

9. Orders dated 28.10.2016 impugned in W.P.Nos.42543, 42545, 42547, 42549, 42552 of 2016 (Sl.Nos. 6 to 10 of Table-2) are pursuant to impugned notices dated 28.07.2016 in W.P No. 42544 of 2016, 42446 of 2016, 42448 of 2016; 42550 of 2016 and 42551 of 2016 (Sl Nos.1 to 5 of Table-1).

10. Since these impugned orders dated 28.10.2016 (Sl Nos. 6to 10 of Table-2) have been passed pursuant to impugned notice dated 28.07.2016 in W.P.Nos.42544, 42446, 42448, 42550 and 42551 of 2016 (Sl.1 to 5 of Table-1), nothing survived in these writ petitions. W.P.Nos.42544, 42446, 42448, 42550 and 42551 of 2016 were infructuous even on the date of their filing. The said writ petitions are therefore liable to be dismissed and are hereby dismissed.

11. As far as other 10 Writ Petitions in Sl.No.6 to 15 to Table-2 are concerned, the petitioner submits that the impugned orders therein are liable to be quashed on the ground that the demands confirmed were in variance with the proposals in the

respective Show Cause Notices and therefore there is a manifest violation of Principles of Natural Justice.

12. According to the learned counsel for the petitioner, for the Assessment Years 2006-2007 upto 2010-2011, the Assessments were not completed as was required under Section 22 of TNVAT Act, 2006 as it stood upto 2012.

13. He submits that Section 22 of the TNVAT Act, 2006 was amended in 2012 with effect from 19.06.2012. As per the amended provision, if no Assessment Orders were passed for the Assessment Years 2006-2007 upto 2010-2011, returns shall be deemed to have been assessed on 30.06.2012 based on the returns filed. It is therefore submitted that since assessment are deemed to have been completed, the respondent cannot issue notice to deny credit particularly on account of their inability to assess and on account of the fact that the petitioner was not required to maintain the accounts for a period of 5/6 years as per Section 64 of the Act.

14. The learned counsel further submits that the interim order which was granted by this Court on 02.12.2016 merely stayed the recovery proceedings and it did not prevent the respondent to re-open the assessment. It is further submitted that the respondent cannot be allowed to improvise the allegation in the Show Cause Notice by adding new grounds which were not part of the original proposals in the notice.

15. According to the learned counsel for the petitioner, since the statute itself prescribes that no documents are required to be maintained beyond the period of 5 years (6 years with effect from 29.01.2016), the respondents cannot call upon the petitioner to furnish documents even if they wish to re-open the assessment under Section 27 of the TNVAT Act, 2006.

16. It is submitted that the impugned demand is contrary to well settled principle of law in Hindustan Polymers Co. Vs Collector of Central Excise, 1999 (106) ELT 12 (SC) wherein it was held that an assessing officer cannot traverse beyond the scope of the Show Cause Notice. The learned counsel for the petitioner also placed reliance on the decision of the Division Bench of this Court in the case of Thirumurugan Enterprises Vs The Customs, Excise & Service Tax Appellate Tribunal and Others, MANU/TN/1559/2015, wherein it was observed as under:-

> "17. The arguments of the learned standing counsel for the Department that all the issues can be trashed out before the adjudicating authority does not find favour with this Court as the Department cannot be allowed to fill up

the lacunae in the show cause notices on the basis of an open remand as alleged by appellants"

17. It is further submitted that even if the case is remanded back, the respondents cannot be allowed to expand the scope of the dispute which did not form part of the original notice. In this connection reliance is placed on the decision of the Hon'ble Supreme Court in the case of ORYX Fisheries Private Limited Vs Union of India (UOI) and Others, MANU/SC/0921/2010, wherein in the Hon'ble Supreme Court observed as under:-

> "28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony."

18. It is further submitted that while computing the period of limitation for assessment or re-assessment under Section 27 of the TNVAT Act, 2006, the period during which the proceedings of assessment or reassessment are stayed alone under the orders of the Civil Court or other competent authority shall be excluded and therefore the respondent cannot improvise the case to make a new demand.

19. It is further submitted that Section 27(7) and 27(8) will apply to the facts of the present case. The imposition of penalty of 300% under Section 27(4) of the TNVAT Act is also impermissible as it has come into force with effect from 29.01.2016 and therefore penalty under Section 27(4) is liable to be dropped.

20. Countering the arguments advanced on behalf of the Petitioner, the learned counsel for the Respondents submits that as per Section 64(5) of the TNVAT Act, 2006 the Officers while conducting audit, can call upon a registered dealer to furnish the documents that are necessary for the purpose of audit.

21. It is further submitted that under Section 64(2)(b) of the TNVAT Act, 2006,expression used is “ordinarily”. The

petitioner was required to maintain records till the assessment are completed and period of re assessment is over. In this case, the assessment is deemed to have been over only on 30.06.2012.

22. As far as the submission of the petitioner that impugned orders were in variance with the Show Cause Notice is concerned, the learned counsel for the respondents submits that these are issues relating to merits which can be decided in the course of appeal and therefore the petitioner should be relegated to file an appeal before the Appellate Authority.

23. I have considered the arguments advanced on behalf of the petitioner and the respondent. Section 22 of the Tamil Nadu VAT Act, 2006 was amended with effect from 19.6.2012.

24. Section 22 of the Tamil Nadu VAT Act, 2006 which was amended with effect from 19.6.2012 vide Tamil Nadu Act 23 of 2012 introduced the concept of deemed assessment. For returns filed in time where no assessment orders were passed, assessment was deemed to have been completed for that year on the 31st October of the succeeding year. Therefore, from 2012 upto the repeal of TNVAT Act, 2006, the assessment was deemed to have been made on 31st day of October of the succeeding year.

25. Returns filed for the Assessment Years between 2006 -07 and 2010-11 which remained unassessed, were deemed to have been assessed on 30.6.2012 in terms of amended Section 22(2) of the TNVAT Act, 2006.

26. Prior to the amendment to Section 22 of the TNVAT Act, 2006, an assessing officer was required to accept the returns submitted by the dealer for the year. The returns were to accompany the proof of payment of tax and the documents prescribed therein. The assessing officer could accept the returns and pass an assessment order.

27. Under Section 27(1) of the said TNVAT Act, 2006, an assessing authority may subject to provisions of the sub-Section (3) may at any time within a period of 6 years [5 years prior to 19.6.2012] from the date of assessment determine to the best of his judgment the turnover which escaped assessment and assess the tax payable on such turnover after making such enquiry as may be considered necessary.

28. Under Section 27(2) of the TNVAT Act, 2006, an assessing officer is empowered to re-open the assessment if he finds that input tax credit has been wrongly availed or where any dealer produced false bills, vouchers, declaration certificate or any other document with a view to support his claim of input tax

credit or refund. As per the provision, the assessing authority shall at any time within a period of 5 years from the date of assessment order reverse input tax credit availed and determine the tax due after making such an enquiry, as may be considered necessary.

29. As there was scope for reopening the assessment under Section 27 of the TNVAT Act, 2006, it was incumbent on the part of a registered dealer to retain records until the expiry of period prescribed therein.

30. As per Section 64(2) of the TNVAT Act, 2006 also a registered dealer was required to ordinarily maintain the accounts at the designated place for a further period of 5 years (later 6 years effect from 29.1.2016). The expression "ordinarily" would include a period of 5 years (later 6 years) after the assessment was completed.

31. Therefore, in case of Assessment Years between 2006 to 2011 where assessment was not completed, a registered dealer was required to maintain accounts upto a period of 5 years from 30.6.2012 which period was increased to six years.

32. Further, as per Section 19(6) of the Tamil Nadu VAT Act, 2006 the input tax credit availed was provisional. It could be revoked by the assessing officer if it appeared to the said officer that the credit availed was incorrect, incomplete or otherwise not in order. An assessee was required to comply with the requirement of Rules framed under the Tamil Nadu VAT Rules, 2007 to validate such credit.

33. Amendment vide Tamil Nadu Act 23 of 2012 was a mere trade facilitation. It was intended to ease the assessment procedure so that the returns which had remained unassessed were deemed to be assessed. It was intended to give a finality to the assessment. However, it did not mean that a registered dealer could destroy the records or plead loss of records if an assessing officer decides to invoke the powers vested under Section 27 of the Tamil Nadu VAT Act, 2006.

34. Section 64 of the Act cannot be interpreted to mean that a registered dealer could destroy the documents or plead loss of documents due to efflux of time and thereby defeat the re-assessment procedure under Section 27 of the TNVAT Act, 2006.

35. In this case the Enforcement Wing of the sales tax department conducted an inspection at the petitioner's Head Office on 7.1.2016. The inspection was carried within the period prescribed for reopening of the assessment under Section 27 of the Tamil Nadu VAT Act, 2006. Notices dated 28.7.2016 to revise

the assessments were issued within the period of limitation under Section 27 of the Act. Therefore, neither the notice nor the impugned orders passed pursuant to such notice can be quashed on those grounds.

36. As the assessment has been deemed to have been completed only on 13.6.2012, the powers of the assessing authority under Section 27 cannot be curtailed by giving a skewed interpretation of Section 64(2) Of the Tamil Nadu VAT Act, 2006.

37. If the petitioner wants to justify the input tax credit availed by it during the period in dispute, it has to produce documents called for to substantiate it. Further, under Section 19(5) of the Tamil Nadu VAT Act, 2006, there were certain restrictions for goods cleared as such or which were used in the manufacture of other goods and sold in the course of interstate trade or commerce falling under sub-Section (2) of Section 8 of the Central Sales Tax Act, 1956. Further, there were few intervening amendments to these provisions and this court has clarified the position. This aspect has not been discussed in the impugned order.

38. Therefore, I do not find any merits in the contention of the learned counsel for the petitioner that the petitioner was not required to produce any document to substantiate the credit.

39. At the same time, I also do not find any grounds to sustain the impugned orders for it has not considered implication of the amendment to Section 19 of the Tamil Nadu VAT Act, 2006.

40. It is further noticed that though the impugned orders beyond the scope of the proposal in the revision notice, it is not an independent and new issue. It is intertwined with the powers to deny credit on account of the failure to comply with the requirement of Section 19 of the Act. However, the respondent had failed to co-operate during inspection and therefore revision notice could not be issued to articulate the proposal clearly.

41. Therefore, I am inclined to quash the impugned orders and remit the case back to the respondent. The impugned orders which stands quashed therefore shall be treated as Show Cause Notice.

42. The petitioner is therefore relegated back to the respondent to answer the issues. The petitioner is therefore directed to file its objection and produce documents that are required for scrutiny before the respondent within a period of 60 days from the date of receipt of copy of this order.

43. If desired the respondent may depute an officer form the department to the petitioner's registered premises to inspect the records and give a report considering the fact that the documents required for verification would be voluminous for credit availed by the petitioner. The petitioner may file a suitable application before the respondent who may consider the same. Respondent shall take each years assessment and pass appropriate orders after hearing the petitioner.

44. It is therefore ordered as follows:

i. W.P No. 42544 of 2016, 42446 of 2016, 42448 of 2016; 42550 of 2016 and 42551 of 2016 are dismissed as infructuous;

ii. Impugned orders in the rest of the writ petition are quashed and the cases are remitted back to the respondent to pass orders within a period of 6 months from date of receipt of this order;

iii. Before passing such order, the petitioner shall file its objection by treating the impugned orders as Show cause notice and file necessary documents to justify the availing of input tax credit within 30 days of receipt of this order.

iv. In case the documents required are voluminous, the respondent may depute an officer for a joint verification of records and call for a report to proceed further either on his own or based on request of the petitioner.

v. The respondent shall pass appropriate orders within a period of 6 months from the date of receipt of this order.

vi. Petitioner shall also be heard before the orders are passed.

vii. W.P.Nos.42543, 42545, 42547, 42549, 42552 of 2016 and W.P.Nos.42569 to 42573 of 2016 stand disposed with the above observation.

viii. No cost. Consequently connected miscellaneous petitions are closed.

ix.

x.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd/jen

To

Deputy Commissioner (CT)-III,
Large Taxpayers Unit,
Dugar Towers,
No.34, Marshal Road,
5th Floor,
Chennai - 600 008.

+15 cc to Mr.M.V.Swaroop, Advocate, S.R.No.12781

+1 cc to the Special Government Pleader, S.R.No.13775

W.P. Nos. 42543 to 42552 of 2016 & 42569 to 42573 of 2016
and
W.M.P. Nos. 36503 to 36507 and 36480 to 36489 of 2016

GJII(CO)
RN(05/08/2020)