IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.631,635,640,642 & 644 OF 2019
AND
W.M.P.NOS.698,699,686,701 & 691 OF 2019

(Through Video Conferencing)

M/s.India Pistons Ltd.,
Rep.by its Chief Financial Officer,
Huzur Gardens, Sembium,
Chennai 600 011.

... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST)
Sembium Assessment Circle,
15,16, Malligai Avenue Extension,
100, Feet Road, Kolathur,
Chennai 600 099.

... Respondent in all W.Ps.

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN : 33211040010/2012-13, 2013-14, 2014-15, 2015-16, & 2016-17 dated 29.10.2018, 28.11.2018 & 29.11.2018 and quash the same.

For Petitioner	:	Mr.R.L.Ramani Senior Counsel for M/s.B.Raveendran (in all W.Ps.)
For Respondent	:	Ms.AmirtaPoonkodi Dinakaran Government Advocate (in all W.Ps.)

COMMON ORDER

By this common order, all these five Writ Petitions are being disposed.

2. The petitioner has challenged the following five impugned Assessment Orders:-

Sl. No.	W.P.No.	Date of Pre-Assessment Notice	Date of Assessment Order (impugned order)	Assessment Year
1	631/2019	16.04.2018	29.10.2018	2012-13
2	635/2019	17.04.2018	29.10.2018	2013-14
3	640/2019	18.04.2018	29.11.2018	2014-15
4	642/2019	19.04.2018	28.11.2018	2015-16
5	644/2019	20.04.2018	28.11.2018	2016-17

3. The impugned Assessment Orders have been challenged primarily on the ground that they have been passed without following the principles of natural justice.

4. It is submitted that the petitioner was issued with notices on various dates as mentioned above and the petitioner had also replied to the above notices on 23.07.2018. Thereafter, a fresh notice was issued on 05.09.2018 for the hearing to be held on 14.09.2018. Since only a short time was granted in the two notices, the petitioner filed an interim reply dated 03.10.2018 and requested further time for personal hearing.

5. It is submitted that however, without giving an opportunity of presenting the case in personal hearing to the petitioner, the respondent proceeded to pass above mentioned five separate impugned Assessment Orders dated 29.10.2018 for the Assessment Years 2012-13 and 2013-14, Assessment Order dated 29.11.2018 for the Assessment Year 2014-15 and Assessment Orders dated 28.11.2018 for the Assessment Years 2015-16 and 2016-17.

6. During the pendency of these Writ Petitions, the petitioner was issued with notices dated 16.07.2021 both under TNVAT Act, 2006 and under CST, 1956 for Assessment Years 2010-11, 2011-12, and 2012-13 and 2013-14.

7. Challenging these notices dated 16.07.2021, the petitioner filed W.P.No.17201 of 2021 & etc batch, before this Court. The aforesaid Writ Petitions were ultimately disposed on 17.08.2021 by an order dated 17.08.2021 by directing the Assessing Authority to fix a date for a personal hearing for the petitioner to attend and file written submissions.

8. It is further case of the petitioner that the petitioner is a manufacturer of Piston Rings and had purchased raw materials from both within the State and from outside the State and sold the manufactured piston both within the State and outside the State.

9. The petitioner had filed returns in Form-I both under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006) and Central Sales Tax Act, 1956 (hereinafter referred to as CST Act, 1956). It is further submitted that the place of the business of the petitioner was inspected by the Commercial Tax Officer Group IV and Deputy Tax Officers Group III and IV, Enforcement Wing (Central), Chennai on 05.01.2017.

10. It is submitted that in the inspection conducted by the Enforcement Wing Officers, several defects were pointed out and 13 Audit Slips were generated by the Enforcement Wing Officers for the Assessment Years 2012-2013 to 2016-2017. It is also submitted that the petitioner has filed objections to all the 13 defects alleged by the Enforcement Wing Officers. The Enforcement Wing Officers have however accepted the objections only in respect of 9 defects. It is submitted that thereafter, sworn statement was recorded by the Enforcement Wing Officers on 06.02.2018.

11. The learned Senior Counsel also submits that the invocation of Section 27 of the Act vide notices mentioned above pursuant to the inspection dated 05.01.2017 and sworn statement dated 06.02.2018 were liable to be interfered as the Officers concerned were not authorised to take up the inspection.

12. The learned Senior Counsel submits that the issue is no longer res-integra and is covered by the decision of the Division Bench of this Court rendered in The Joint Commissioner (CT) Enforcement -1, Chennai 6 and 5 Others Vs. M/s.Original Vel Sporting News, No.8/38, Davidson Street, Broadway Chennai, rep.by its Manager, Mr.Dinesh Kumar Soman, in W.A.No.1757 of 2019 dated 04.06.2019 .

13. The learned Senior Counsel further submits that the issue that arose before the Division Bench of this Court whether the Commissioner of Commercial Taxes is the authorised officer to undertake inspection.

14. The learned Senior Counsel submits that the issue was considered by the Division Bench of this Court in the above case. It is submitted that the Court came to a conclusion that the power to delegate further by the Commissioner is not provided under Section 64(4) of the TNVAT Act, 2006.

15. The learned Senior Counsel for the petitioner further submits that out of other three issues, two of issues have been decided by the decision of this Court rendered in W.P.Nos.30098 to 30104 and 32479 of 2016 dated 26.07.2017 in the case of M/s. Original Vel Sporting News Vs. The Joint Commissioner (CT) and others and the decision of this Court in Ran India Steels (P) Ltd., Rep.by its Managing Director R.Radha, Ayyappa Tower, 1st Floor, C.H.B.Colony, Velur Road, Tiruchengode 637 211, Namakkal District Vs. The Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai 600 005 and another, W.P.No.3172 of 2014. Relevant portion of the said decision of this Court, reads as under:-

> 2.This issue is now covered by a decision of this Court in Interfit Techno Products Ltd. Vs Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chennai and Another, (2015) 81 VST 389 (Mad).
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> 3.In paragraph Nos.61 & 62, learned Single Judge has summarised his views as follows:-
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> 61. In the light of the above conclusion, the decision relied on by the learned counsel for the petitioner in the case of Binani Industries Limited v. Assistant Commissioner of Commercial Taxes VI Circle, Bangalore [2007] 6 VST 783 (SC) with regard to reopening of the assessment does not render assistance to the case of the petitioners. Accordingly Question No. 6 is answered against the petitioners.
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> 62. In the result,
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> (1) the challenge to the impugned circular is held to be unnecessary since the circular is a non statutory circular and is in the nature of guideline and the prayer for quashing the circular is rejected.
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> (2) Section 18 of the TNVAT Act is not an independent or a separate stand alone provision under the provisions of TNVAT Act but subject to other provisions of the Act including Section 19 of the VAT Act.
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> (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 the 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 any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act.

(4) It is held that the Assessing Authorities are not justified in adopting uniform percentage as invisible loss and calling upon the dealer to reverse the input tax credit availed to that extent. Consequently, all notices issued to the petitioner for reopening and all consequential order passed reversing the input tax credit to the extent of either 4% or 5% or on adhoc per centage stands set aside. However, liberty is granted to the concerned Assessing Officer to issue appropriate show cause notices to the petitioners clearly setting out under what circumstances they propose to revise or call upon the petitioner to reverse refund sanctioned and after inviting objections proceed in accordance with law.

(5) The undertaking given by the dealer in Form W is with regard to information furnished for the purpose of verification by the Assessing Officer under Rule 11 (2) of the VAT Rules for being entitled to refund under Section 18(2). Therefore, it is not as if the Act does not provide a remedy in the event of a wrong or erroneous refund sanctioned when Section 18 cannot be treated as an independent provision but subject to restrictions and conditions under Section 19 of the VAT Act.

16. As far as the other issues relating to use of indirect materials are concerned, the learned Senior Counsel submits that if appropriate opportunity is given to the petitioner, the petitioner will explain as to why the allegations in the notices were not tenable. Therefore, he submits that the impugned orders are liable to be set aside.

17. As far as Manufacturing Loss is concerned, the learned Senior Counsel submits that the rejected pistons were melted and recycled for further production. In respect of Waste Aluminum Borings, it is submitted that the petitioner had sold them as scrap and paid output tax on the same and therefore the question of reversal of ITC does not arise.

18. It was further submitted that the respondent called upon the petitioner to reverse ITC on the ground that the seller did not report the corresponding turnover in Annexure II of their return and therefore the petitioner was ineligible to avail ITC on said purchases even though the petitioner was in possession of the original tax invoice and that the petitioner has also reversed ITC on the certain purchases made from the dealers whose VAT Registrations were cancelled, but, details of all the dealers were not given to the petitioner.

19. Defending the impugned orders, the learned Government Advocate for the respondent submits that there is no violation of principles of natural justice inasmuch as the petitioner was issued with two notices for each of the assessment orders and a specific time was given for reply and for appearance of the petitioner.

20. The respondent submits that as per Rule 10 of TNVAT Rules 2007, it is the duty of the petitioner to prove that the sellers have paid the tax thereon. It is submitted that vide notice dated 05.09.2018, a date was fixed for the personal hearing on 12.09.2018. However, the petitioner failed to avail the opportunity of hearing. It is submitted that the aforesaid date of hearing was also fixed, but, the petitioner failed to appear.

21. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Government Advocate for the respondents. I have also perused the order dated 04.06.2019 passed by the Division Bench of this Court in the case of the Joint Commissioner (CT) and others Vs. M/s.Original Vel Sporting News, in W.A.No.1757 of 2019 in the context of Section 64(4) of the TNVAT Act, 2006.

22. It is noticed that the appeal in W.A.No.1757 of 2019 arose from an order dated 26.07.2017 passed by the learned Single Judge in W.P.No.30098 of 2016 and batch. Challenge in the said W.P.No.30098 of 2016 before the learned Single Judge was confined to Pre-Assessment Notice dated 10.03.2016 for the Assessment Year 2007-08, issued on the basis of the VAT audit of the business premises of the petitioner therein conducted on 08.09.2014 pursuant to the authorisation dated 03.09.2014

bearing reference I.F.No.061/2014 issued by the Joint Commissioner of Commercial Tax, Enforcement Wing-I. Challenge before the learned Single Judge in the aforesaid case was not on the Circular dated 16.05.2014 bearing reference No.Q/11740/2013 of the Commissioner.

23. Therefore, it is not clear as to why the matter came to be decided by the Division Bench by holding that the said circular was bad in law when there was no challenge to the Circular dated 16.05.2014 bearing reference No.Q/11740/2013 of the Commissioner before the leaned Single Judge.

24. A reading of the order dated 26.07.2017 of the learned Single Judge of this Court in W.P.No.30098 of 2016 and batch also does not refer to the aforesaid Circular dated 16.05.2014 bearing reference No.Q/11740/2013 of the Commissioner. Therefore, I am unable to apply the said decision of the Hon’ble Division Bench of this Court to facts of the present cases.

25. In the decision of this Court in the case of M/s.Jain Jubilant Cars Private Limited, Represented by its Director, No.18/3, Raja Annamalai Building, Rukumani Lakshmipathy Salai, Egmore, Chennai – 600 008. vs. The Joint Commissioner (CT), Enforcement – I, Chennai – 600 006 and two others, in W.P.No.24789 of 2015, dated 12.02.2021, a similar issue was considered by this Court. This Court in the above case observed as under:-

> 17. In any event, no prejudice or harm will be caused to the petitioner merely because the Audit Report was generated after an Audit held on 14.03.2014. After the Audit is completed, a notice is to be sent for revision of assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006. It is therefore not open for the petitioner to disown and distance itself for the liability that may be eventually fastened under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

26. Therefore, challenge to the notices and consequential order passed by the respondent on the ground that they were contrary to Section 64(4) of the TNVAT Act, 2006 cannot be countenanced in the light of the decision of this Court in Tvl.Bharath Traders, Represented by its Partner, N.Venkatesh vs. The Commissioner of Commercial Taxes, O/o.The Principal and Special Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai 600 005 and another, in W.P.(MD) Nos.15103 of 2015 etc. batch, order dated 30.08.2019.

27. During the pendency of these writ petitions, the Principal Secretary / Commissioner of Commercial Tax has also issued a letter dated 29.10.2021 bearing reference No.KW10/1539/2016. The issue covered by the said Circular will have to be followed.

28. As far as invisible loss is concerned, the issue is now answered in W.P.No.3172 of 2014 vide order dated 04.12.2019 following the views taken in M/s. Interfit Techno Products Ltd. Rep. By its Managing Director-A.V. Palaniswamy SF. No. 112, Madhapur Road Kaniyur Village Karumathampatti Via Coimbatore 641 018 vs. The Principal Secretary/Commissioner of Commercial Taxes Ezhilagam, Chepauk, Chennai-600 005and another, 2014 SCC Online Mad 8459. To that extent, the impugned order cannot be sustained.

29. As far as other surviving issue relating to indirect materials is concerned, notices are not clear as to the basis on which the tax was proposed to be demanded. Therefore, the impugned Assessment Orders are quashed to that extent and the cases are remitted back to the respondent.

30. Since the notices issued to the petitioner are also not clear, liberty is given to the respondent to issue a corrigendum to the respective notices within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall thereafter file objections/reply, within a period of 30 days. The respondent shall pass appropriate orders on merits within a period of 30 days thereafter.

31. These Writ Petitions are thus partially allowed as far as invisible loss in the light of the above discussion. So far as other issues relating to Input Tax Credit under Section 19(5)(c) of the TNVAT, Act 2006 and demand and other issues, the respondent is directed to pass an order on merits and in accordance with law, within a period of 60 days from the date of receipt of a copy of this order.

32. Needless to state, before passing such order, the petitioner or an authorised representative of the petitioner shall be heard in person and/or through Video Conference in case the petitioner desires for a personal hearing.

33. These writ petitions are partly allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

kkd / jen

To

The Assistant Commissioner (ST)
Sembium Assessment Circle,
15,16, Malligai Avenue Extension,
100, Feet Road, Kolathur,
Chennai 600 099.

+1cc to M/s.B.Raveendran, Advocate, S.R.No.63201

W.P.Nos.631, 635, 640, 642
& 644 of 2019 and
W.M.P.Nos.698, 699, 686,
701 & 691 of 2019

RSI(CO)
RLP(16/03/2022)