IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. Nos.6904 and 6906 of 2021
and
WMP. Nos.7457 and 7459 of 2021

M/s.Ponneri Steel Industries,
rep. By its Partner Mr.Anand Garg
No.120/@B & 121, G.N.T. Road,
Peravallur Village, Chinnambedu Post
Thiruvallur - 601 206. …Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (ST),
Ponneri Assessment Circle,
Survey No.1275/3,
Integrated Commercial Taxes Building (North Division)
First Floor, Room No.106, Elephant Gate Road,
Vepery, Chennai - 600 003. …Respondent in both W.Ps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records on the files of the respondent in TIN.33271700450/2006-07 AND 2007-08 dated 21.01.2021 resspectively and quash the same as illegal, against the principles of natural justice and fair play, contrary to the provisions of TNVAT Act and decisions of this Hon'ble High Court.

For Petitioner : Mr.P.Prithvi Chopda
For Respondents : Mr.R.Swarnavel
Government Advocate

C O M M O N O R D E R

Mr.Swarnavel, learned Government Advocate accepts notice for the respondent and is armed with instructions to proceed with the matter. Hence, by consent of both parties, these Writ Petitions are disposed finally even at the stage of admission.

2.These Writ Petitions challenge orders of assessment dated 21.01.2021, passed in terms of the provisions of the

Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2006-07 and 2007-08.

3.Two issues arise in these assessments, the first relating to a stock transfer and the second relating to reversal of Input Tax Credit (ITC) on burning loss in terms of Section 19(9) of the Act.

4.This the second round of litigation before this Court. Original assessments have been challenged by way of two sets of Writ Petitions that had come to be disposed remitting the matters to the file of the Assessing Authority, to be re-done after hearing the petitioner and conducting due enquiry. Pursuant to the order of this Court dated 25.07.2016, a notice was issued by the Assessing Officer on 10.04.2017, wherein, at paragraph Nos.6 and 7, he deals with the issue of burning loss on ITC, stating as follows:

> '6. As regards the manufacturing 'burning loss', it is a known fact that in the manufacturing sector, there should be a burning loss in the event of manufacturing of a commodity, that on perusal of the quantitative statement filed for the year 2006-2007, the dealers themselves admited by declaring that there was a 'Burning loss' of 434.955 Mts., and accordingly there was burning loss during the year. According to the statement filed, the total consumption during the year was 9084.035 Mts., in which they declared a 'Burning loss'of 424.955 Mts., which amounts 4.67%. The dealers have purchased their consumable raw material SCRAP from IMPORT, INTERSTATE AND LOCAL. They kept the stock of their purchases separately. It was explained that the material purchased from Import and Interstate cause more loss because the scraps are not in good condition. But the material purchased locally is perused by them, and if it is in good condition then only they gave purchase order. Hence the loss is very low. Hence the burning loss is taken as 1% instead of 4%.
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> 7.Regarding the reversal of ITC under Sec.19(4) of the TNVAT Act 2006, it is noticed that the dealers had not filed the break-up details showing that the consignment sales were effected from out of the purchases

effected from Other States, Imports and Local Purchases, etc., and in the absence of such vital information's, the ITC worked out seems to be correct, and accordingly, this issue also requires no modification.'

5.The petitioner has filed its response on 21.04.2017 including the break-up of month wise details in relation to the consignment transfer as well as import and interstate purchase for the period 01.01.2007 to 30.09.2010. Thereafter, there appears to have a change in the Officer and a notice was issued on 15.06.2020 by the incumbent officer and personal hearing afforded. The petitioner appeared as well as filed written response enclosing bills earlier filed, once again. The proceedings have culminated in the impugned orders of assessment.

6. Learned counsel for the petitioner would submit that there has been an error in appreciation of the issue, leading to the petitioner, while supplying the details of import and interstate purchase in relation to the consignment sales as well as purchases effected, omitting to file documentary evidence, to establish one-to-one match, as required by the Officer. The petitioner, at pages 50 and 51 of the typed set filed in support of these Writ Petitions, has placed some particulars of sales and purchases effected from other States, locally and by way of import. According to the learned counsel for the petitioner the tabulation at pages 50 and 51 are based on materials and data available with the petitioner, though the same have, admittedly, not been produced before the Officer.

7.Mr.Swarnavel, in the above circumstances, would express no objection to this Court's suggestion that the matter be remitted to the Assessing Authority to be re-done de novo.

8.Thus, in the interests of substantial justice, this issue is remitted to the file of the Officer, to be re-done after hearing the petitioner and consideration of materials that the petitioner claims that it has in its possession.

9. As far as the issue of burning loss is concerned, the respondent/Assessing Officer reduces the original proposal from 4% to 1% claimed by the petitioner. This Court has had occasion to deal with the reversal of ITC on invisible loss in the case of Interfit Techno Products

Ltd. V. Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chennai and another (81 VST 389) and held that such reversal should not be effected by adopting a uniform/flat percentage, but on the basis of some scientific methodology employed by the respondent to quantify the loss.

10. Accordingly and in the light of the aforesaid order, this issue is also remitted, to be re-done in the light of the directions in Interfit Techno Products Ltd. (supra).

11. For this above purposes, the petitioner will appear before the Assessing Authority on 31.03.2021 along with supporting materials, if any, without expecting any further notice in this regard. The Assessing Authority, after hearing the petitioner and considering the materials, if any, filed by the petitioner, shall pass orders of assessment within a period of four (4) weeks from 31.03.2021, i.e., on or before 01.05.2021.

12. These Writ Petitions are allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar()

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Ponneri Assessment Circle,
Survey No.1275/3,
Integrated Commercial Taxes Building (North Division)
First Floor, Room No.106, Elephant Gate Road,
Vepery, Chennai - 600 003.

+1cc to Mr.T.PRAMODKUMAR CHOPDA, Advocate, S.R.No.17456

+1cc to the Government Pleader(TAXES), S.R.No.17627

SL

TK/15.04.2021/3P/4C

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