IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.3839 & 3840 of 2016
and W.M.P.Nos.3211 & 3212 of 2016

M/s.TAW Trading Corporation,
Rep.by its Partner T.Rafeeq Ahmed,
No.55/27, Vepery High Road,
Periamet, Chennai 600 003. ... Petitioner in both W.Ps.

vs.

1.The Commercial Tax Officer,
Vepery Assessment Circle,
No.10, Palaniappa Towers, Greams Road,
Chennai 600 006.

2.The Joint Commissioner (CT)
Enforcement-I, Papjm Buildings,
Greams Road, Chennai 600 006.
... Respondents in both W.Ps.

Prayer in both W.Ps.: Writ petitions are filed under Article 226 of the Constitution of India, praying for a writ of Certiorari to call for the records of the first respondent in TIN:33550524171/2012-13 & TIN: 33550524171/2013-14 dated 08/12/2015 and quash the same.

For petitioner : Mr.V.Sundareswaran
(In both W.Ps.)

For respondents : Mr.R.Swarnavel
(In both W.Ps.)
Government Advocate.

C O M M O N O R D E R

By this common order both the writ petitions are being disposed. In these writ petitions, the petitioner has challenged a portion of the impugned assessment orders dated 8.12.2015 passed by the 1st respondent for the assessment years 2012-2013 and 2013-14.

2. The petitioner has accepted the liability in the impugned orders except on the issue relating to denial of input tax credit on account of cancellation of the registration of the dealer who sold the inputs to the petitioner on which input tax credit was availed and on account of the demand of value added tax on account of the difference in the turnover in the balance sheet and the turnover declared in the returns filed by the petitioner.

3. As for as denial of input tax credit on account of cancellation of the vendor registration is concerned, the issue is now squarely covered in favour of the petitioner as per the decision of this Court in Altaf Shoes Private Limited versus The Asst Commissioner (CT) [2012] 50 VST 179 (Mad) and another decision of this court in Sri Vinayaka Agencies versus Asst Commissioner[2013] 60 VST 283 (Mad). The decision of the Court in Sri Vinayaka Agencies versus Asst Commissioner[2013] 60 VST 283 (Mad) has been affirmed by a Division Bench of this Court recently by its order dated 14.03.2020 in W.A.No.4292 of 2019. Learned Government Advocate for the respondents confirms the same. Consequently, the impugned orders in the respective writ petitions to that extent are quashed and therefore relief stand allowed to the petitioner.

4. As far as the issue relating to difference in the turnover, in the impugned order for the assessment year 2012-13, it is noticed that it has been stated the petitioner has not filed any sales reconciliation statement certified by the auditors with details of branches and their sales turnover. It has been further stated that the audited balance sheet for the year 2012-13 also had not been produced for verification and since the burden of duty

was in the petitioner to file explicit records for sale when the value of sale difference runs into crores, the explanation of the petitioner that the difference was on the turnover on which VAT has been paid by their Jaipur Branch has been rejected.

5. Learned that counsel for the petitioner submits that no opportunity was given to the petitioner to furnish the records mentioned in the impugned order dated 8.12.2015 impugned in W.P.No.3839 of 2016. Learned counsel for the petitioner submits that these records will be furnished and explained and therefore requested for a remand on this issue. Learned Government Advocate for the respondents submits that matter can be remitted back to that extent alone.

6. In the light of the above, the respective writ petitions stand allowed to the extent of denial of input tax credit which are covered by the above decisions of this Court Altaf Shoes Private Limited versus The Asst Commissioner (CT) [2012] 50 VST 179 (Mad) and another decision of this Court in Sri Vinayaka Agencies versus Asst Commissioner[2013] 60 VST 283 (Mad) as affirmed by the Division Bench of this Court in its order dated 14.03.2020 in W.A.No.4292 of 2019.

7. The issue relating to mismatch in the turnover declared in the balance sheet and in the returns, the matter is remitted back to the 1^{st} respondent to pass a fresh order on merits after considering the representation if any of the petitioner within a period of six weeks from the date of receipt of copy of this order.

8. Petitioner is given liberty to file necessary representation duly supported by the documents and certificates of the auditors within a period of 2 weeks from the date of receipt of this order.

9. These writ petitions stand partly allowed in terms of the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
Vepery Assessment Circle,
No.10, Palaniappa Towers, Greams Road,
Chennai 600 006.

2.The Joint Commissioner (CT)
Enforcement-I, Papjm Buildings,
Greams Road, Chennai 600 006.

+1cc to Mr.V.Sundareswaran , Advocate SR.No. 1020
+1 cc to Spl Government Pleader Sr.No. 1357

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A.SK(18.02.2021).