BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 24.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)Nos.13746, 13750 & 14130 of 2010
and
MP(MD)Nos.1, 1 & 2 and 1 of 2010

in WP(MD)No.13746 of 2010 :

Sterlite Industries (India) Limited,
Rep.by its
Associate General Manager
Nitesh Sharma ... Petitioner

Vs.

1.The Assistant Commissioner (CT),
Thoothukudi III Assessment Circle,
Thoothukudi.

2.The Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005. ...Respondents

Prayer: Writ petition is 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 first respondent herein in his TIN/33745921098/2007-08 dated 30-09-2010 and quash the same and direct the first respondent herein to grant input tax credit in respect of purchase of furnace oil used in the generation of electricity in their captive power plant which is integrally connected for carrying out manufacturing activity in the manufacture of final product as per Section 19(2) of the Tamil Nadu Value Added Tax Act, 2006 without influenced by Letter No.VAT Cell/53127/2008/A1 dated 03-03-2010.

in WP(MD)No.13750 of 2010 :

Sterlite Industries (India) Limited,
Rep.by its
Associate General Manager
Nitesh Sharma ... Petitioner

Vs.

1.The Assistant Commissioner (CT),
Thoothukudi III Assessment Circle,
Thoothukudi.

2.The Appellate Deputy Commissioner,
(CT), FAC, Tirunelveli.

3.The Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005. ...Respondents

Prayer: Writ petition is 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 first respondent herein in his TIN/33745921098/2006-07 dated 30-03-2010 confirmed by the second respondent herein in his A.P No.V/3/2010 dated 16.09.2020 and quash the same and direct the first respondent herein to grant input tax credit in respect of purchase of furnace oil used in the generation of electricity in their captive power plant which is integrally connected for carrying out manufacturing activity in the manufacture of final product as per Section 19(2) of the Tamil Nadu Value Added Tax Act, 2006 without influenced by Letter No.VAT Cell/53127/2008/A1 dated 03-03-2010.

in WP(MD)No.14130 of 2010 :

Sterlite Industries (India) Limited,
Rep.by its
Associate General Manager
Nitesh Sharma ... Petitioner

Vs.

The Assistant Commissioner (CT),
Thoothukudi III Assessment Circle,
Thoothukudi. ...Respondent

Prayer: Writ petition is 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 first respondent herein in his TIN/33745921098/2008-09 dated 15.11.2010 and quash the same and direct the respondent herein to grant input tax credit in respect of purchase of furnace oil used in the generation of electricity in their captive power plant which is integrally connected for carrying out manufacturing activity in the manufacture of final product as per Section 19(2) of the Tami Nadu Value Added Tax Act, 2006.

For Petitioner in all cases	:	Mr.N.Inbarajan
For Respondents in all cases	:	Mrs.J.Padmavathi Devi, Special Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2.Sterlite Industries (India) Limited is the petitioner in these three writ petitions. WP(MD)No.13750 of 2010 has been filed questioning the order passed by the appellate authority while the other two writ petitions are directed against the orders passed by the original original assessing authority. The assessment years pertain to the assessment years 2006-07, 2007-08 and 2008-09. The assessments of the writ petitioner were concluded on deemed assessment basis under Section 22(2) of the Act. The impugned orders are sought to be revised by the assessing authority on the ground that furnace oil and LSHS oil were used in the captive power plant for producing electricity and since no ITC is available for producing power, the ITC claimed on the purchase of those oil will have to be reversed. The petitioner filed detailed objections. The principal point taken by the petitioner is that furnace oil is used only as a fuel for maintaining heat for smelting purpose and not for producing electricity. The petitioner specifically called upon the assessing authority to visit the factory premises and conduct a spot study. Rejecting the said stand taken by the petitioner, the impugned orders came to be passed. They are duly assailed in these two writ petitions.

3.Counter affidavits have been filed in all the three writ petitions and the learned Special Government Pleader took me through the contents set out therein. The learned Special Government Pleader pointed out that the petitioner is seeking a double benefit. It is stated that the petitioner had already applied for refund and the same was being processed. She would also point out that the authorised signatories had a number of personal discussions with the assessing authority and therefore, the question of granting independent personal hearing will not arise at all. She also would point out that the furnace oil in question was used only for producing electricity and since electricity is an exempted commodity, the ITC claimed by the petitioner was rightly reversed.

4.I carefully considered the rival contentions and went through the materials on record. The impugned order will have to be set aside for the simple reason that the assessing authority did not give specific personal hearing notice to the assessee. Of course, in the impugned order, it has been mentioned that the authorised signatories were allowed to discuss the issue many times and no additional details were adduced. Of course, there was informal interaction between the assessee on the one hand and the authority on the other. When Section 27 of the TNVAT Act, 2006 contemplates grant of personal hearing to the assessee, it will have to be fulfilled only by issuing personal hearing notice. In the case on hand, no personal hearing notice was issued. The Hon'ble Madras

High Court in M/s. Amararaja Batteries Limited rep. By its Senior Manager-Commercial vs. The Assistant Commissioner (CT) (W.P. Nos. 18691 to 18696 of 2014) held as follows :

> "7.As noticed above, while issuing the notice dated 30.12.2013 the respondent had stated that the petitioner/ dealer are given an opportunity of hearing and file their objections if any, within 15 days of the receipt of the notice. Further, the notices indicate that apart from the petitioner's right to file their objection, opportunity of being heard would also be afforded. Under normal circumstances, the first requirement is to file an objection/reply to show cause notice. The opportunity to file a reply is to enable the dealer to clarify the factual issues. Therefore, after objections were filed before the respondent, the respondent should have fixed a date for personal hearing and afforded an opportunity to the petitioner to appear before the respondent and make their submission and produce the records in support of their claim. In fact, Circular No. 07/2014 mandates such a procedure, which specifically states that, before passing a revision order, the dealer should be given a reasonable opportunity and personal hearing and no order of revision should be made without affording an opportunity to the dealer as provided under the provisions of the Act. Though there would have been an intention for giving personal hearing in the show cause notice,the personal hearing ought to be fixed by the respondent and not that the petitioner should seek for a personal hearing to produce the records, since it is a proposal to revise an assessment already made. Since there is violation of principles of natural justice this Court has to interfere with the revision order."

5.Applying the aforesaid ratio, I have to necessarily hold that non-issuance of independent personal hearing notice had indeed vitiated the impugned proceedings. That apart, the core contention of the learned counsel for the petitioner is that the goods in question, namely, furnace oil and LSHS oil were indeed used only for manufacturing copper. He would place reliance on the decision of the Hon'ble Orissa High Court reported in ***(2008) 15 VST 228 Orissa (Reliance Industries Ltd. vs Asst. Commissioner Of Sales Tax).*** The Hon'ble Division Bench of the Orissa High Court in the said case held that the furnace oil was used in the process of manufacturing of the final product and it has to be treated only as an input tax credit and that therefore, the input tax paid on the purchase of furnace oil can be claimed as input tax credit. Therefore, according to the learned counsel for the petitioner, the petitioners thus have a good case on merits. His grievance is that this point was not at all considered by the assessing authority while passing the impugned orders. The assessee has been contending right from the inception that the furnace oil is being utilised only for maintaining the heat for the purpose of smelting copper and that it was not used for production of electricity. This issue could have been resolved only by holding proper study and conducting spot inspection and verifying the manufacturing process of the assessee.

6.I find that this exercise was not undertaken. It is for this reason, the learned counsel for the petitioner submitted that the matter will have to be revisited by the authority. I find this request to be reasonable and having weight. In this view of the matter, the orders impugned in these writ petitions are quashed and the matter is remitted to the file of the assessing authority to pass orders afresh in accordance with law. The assessing authority is directed to issue a fresh pre-revision notice so that the assessee can meet the same during personal hearing that is to be conducted. I make it clear that all the contentions of the petitioners are left open. If the assessing authority raises any additional issue, the petitioner is at liberty to controvert the same.

7.The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Assistant Commissioner (CT),
Thoothukudi III Assessment Circle,
Thoothukudi.

2.The Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Appellate Deputy Commissioner,
(CT), FAC, Tirunelveli.

+3 CC to M/s.N.INBARAJAN, Advocate (SR-13488,13489,13490[F] dated 25/03/2021)

WP(MD)Nos.13746, 13750 &
14130 of 2010

24.03.2021

RK(26.05.2021) 6P 7C