IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.3861, 3866 & 3869 of 2020 &
WMP.Nos.4581, 4586 & 4587 of 2020

M/s.Kurlon Enterprises Limited,
Rep. by its Authorized Singatory,
No.194, 1st Floor, Pycrofts Road,
Royapettah, Chennai - 600 014. ... Petitioner in all W.P.'s

Vs

State Tax Officer,
Thiruvallikeni Assessment Circle,
Greenways Road, Chennai - 600 028. ... Respondent in all W.P.'s

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings in TIN No.33500681484/2013-14, TIN No.33500681484/2014-15 & TIN No.33500681484/2015-16 and quash the revisional assessment orders passed on 16.12.2019 in all writ petitions as illegal and direct the respondent to pass fresh orders by verifying the sales invoices of the petitioner with the credit notes raised by the petitioner and also to verify the accounts of the petitioner without being carried away by the proposals of the Enforcement Wing and to decide the case after providing an opportunity of personal hearing to the petitioner.

(In all W.P.'s)

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mrs.K.Vasanthamala
Government Advocate

O R D E R

As far as the first issue is concerned, the challenge is to orders of assessment for the periods 2013-2014 to 2015-2016 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2.The following order was passed on 03.11.2022 after hearing the parties in part:

"Heard in part. The issues that arise are two fold:

(i) Sales Return: According to the learned counsel for the petitioner, all particulars to justify the claim of exemption of sales returns have been supplied multiple times. My attention is also drawn to letter dated 29.11.2017, accompanied by the extract of a letter delivery book, though there is no acknowledgment there by the Assessing Officer.

In this letter, the petitioner refers to hard copies of sales returns print out for the years 2011 to 2015 as well as annexures for the years 2011-15 copied in a pen drive. Let records be produced to verify receipt/availability of the aforesaid information in the records.

(ii) Other income: Upon verification of the balance sheet, the Assessing Authority has added to the turnover, miscellaneous income, packing and forwarding charges, rewards, freight charges and resale of software licences.

The primary point that would arise is as to whether the aforesaid amounts represent turnover from sales, at all.

2. List on 07.11.2022 at item no.1 in the second list."

3.Today, Mrs.K.Vasanthamala, who is in possession of the records confirms that there is neither letter dated 29.11.2017 nor a pendrive found therein. Learned counsel for the petitioner is also not in a position to produce any other acknowledgment in support of the alleged production of records before the petitioner.

4. Faced with this prospect, learned counsel for the petitioner would request that the petitioner be permitted to file an appeal before the statutory authority with all materials in support of its claim of exemption for sales return. Learned Government Advocate does not object to this submission which is also supported by an endorsement made by learned counsel for the petitioner on behalf of petitioner.

5.The request is acceeded to. Appeal, if filed within a period of four (4) weeks from today, shall be admitted without reference to limitation but ensuring compliance with all other statutory conditions, including pre-deposit.

6.As regards the second issue relating to addition made on account of miscellaneous income, resale of software licence, rewards, freight charges and packing & forwarding charges, it is the stand of the petitioner that the aforesaid amounts taken for the balance sheet project All India figures. Only the amounts attributable to the State of Tamil Nadu must, if at all, be added in the petitioner's case.

7.Petitioner also argues that no addition is warranted at all insofar as the above incomes do not bear the character of 'turn over'. I do find that the reply of the petitioner dated 03.08.2017 has set out a credible explanation in regard to the proposed addition on account of the miscellaneous income, resale of software licence, packing and forwarding, rewards and freight charges, which is as follows:

> *"Misc. Income:*
>
> *We have provided the Company Annual Report/ Balance sheet for the year 2013-14 from where taken the amount of Misc. Income. Please note that the amount furnished in that is for all India basis and not separately for Tamilnadu. Also note that this misc. income is no way related to sales as such no tax involved in it. This is some adjustment account to dealers against their old outstanding with their deposit amount and small surplus amount of deposit transferring into misc. income. So there is no question of tax on such amount as sales is not involved in it.*
>
> *Resale of Software Licence:*
>
> *This amount is taken from the company all India Annual Report. Tally software package was installed in the system of our few dealers of other states directly from our Head Office at Bangalore through on line. So there is no question of sales, resales or tax involved in it in the state of Tamilnadu.*

Packing & forwarding, Rewards and Freight charges:

This amount has also taken from the Company Annual Report for Pan India. This amount is the freight accounted at HO for the Primary transportation cost from the Factory to respective Sales offices and related packing cost. We are delivering the materials to the dealers place at Free of Cost. And Also note that we are billing to our dealers at our Net Billing Rate (Taxable Value) which inclusive of all the above expenses including rewards which we are giving our dealers as sales promotion incentive depends on their month wise target vs. achievement. These are expenses which absorbing by the company within the Taxable Value. We are not charging any extra amount to our dealers. We are collecting the applicable tax on the Net Billing Rate and depositing to the department every month while filing the monthly return. So there is no question of imposing tax or any other levies on such amount."

8.The assessing authority has not even bothered to advert to the explanation that has been set out and has rejected the same in a single line.

9.For the aforesaid reasons and since the Court finds the explanation put forth by the petitioner tenable in law, the addition on this score is set aside.

10.These writ petitions are disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

07.11.2022

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Index : Yes
Speaking Order/Non-Speaking Order

Dr.ANITA SUMANTH, J.

kbs

To

State Tax Officer,
Thiruvallikeni Assessment Circle,
Greenways Road, Chennai - 600 028.

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