IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.9659 of 2022
and
W.M.P.No.9400 of 2022

SLO Steels Limited
Rep.by its Director Mr.Pratap Kumar Rakesh
403/D, T.H.Road, Thiruvottiyur
Chennai 600 019. ... Petitioner

-Vs-

The Assistant Commissioner (ST)
Thiruvottiyur Assessment Circle
Integrated Commercial Taxes Complex
32, Elephant Gate Bridge Road, Chennai-3.
... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TIN 33511102895 / 2016-17 dated 25.01.2022 to quash the same.

For Petitioner : Mr.R.Kumar

For Respondents : Mr.R.Siddharth
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records of the respondent in TIN 33511102895 / 2016-17 dated 25.01.2022 to quash the same.

2. The petitioner was a dealer under the erstwhile TNVAT Act, 2006 (In short 'the Act'). In respect of Assessment Year 2016-17, a surprise inspection was conducted under Section 65 of the Act, pursuant to which notice was issued and assessment order was passed. However, the said assessment order was under challenge before this Court in W.P.No.24597 of 2021, where a learned Judge of this Court, by order dated 14.12.2021, having set aside the said assessment order, remitted the matter back to

the assessing authority for reconsideration by giving an opportunity of being heard to the petitioner.

3. Pursuant to the earlier order, notice was given by the Revenue to the petitioner dealer to give reply and produce certain documents like,

- Xerox copy of the e-filed monthly returns for VAT & CST along with annexure I and annexure II.
- Xerox copy of the bank statements.
- Xerox copy of the ledger account maintained for each seller for the payment made for the purchases made by the petitioner dealer
- Xerox copy of the ledger account maintained for each purchaser for the payment received for the sales made by the petitioner dealer.

4. When such a reply was given, after receipt of the same, the Revenue, by notice dated 11.01.2022, has further directed the assessee to submit the following documents.

- Lorry receipt for the movement of goods issued by the transporters.
- Loading and unloading charges paid for the goods purchased.
- Summary of purchases and sales effected from their suppliers and customers respectively during the year in the prescribed format.

5. In response to the said notice, the petitioner dealer replied to the Revenue on 21.01.2022 that the Revenue has misconstrued the judgment of this Court dated 10.06.2014 in W.P.No.14821 of 2014 and they enclosed only the summary of the purchases and sales effected from the suppliers and customers and in minimum period, since the petitioner stored the goods at godown, the said goods will be delivered by the seller at their godown, the price will be fixed with the seller including the delivery of goods at their godown. The petitioner further stated that they have their sister concern at the same campus and for loading and unloading the goods no separate expenses were paid and therefore the transport documents could not be filed.

6. Having considered the inputs supplied by the petitioner assessee, the Revenue has come to the following conclusion.

> "7.The replies filed by the dealers were carefully considered with reference to the nature of defects noticed at the time of

Surprise inspection with the following results.

a) The dealers have not produced original copies of purchase invoices at the time of inspection and till the date of passing this proceedings.
b) 90% of their purchases have been effected from their sister concern Tvl.SLO Industries Ltd., amounting to Rs.76,28,07,935/- out of their total purchase value of Rs.89,19,32,756/- who is situated in the same business premises occupied by the dealer, where there have been no movement of goods as accepted by the dealer himself.
c) This type of sales / purchases between group companies / related persons situated within the same premises without actual movement of goods is the typical model for bill trading activities, where there would be bank statements, proper entries in Annexures to Form I returns and ledger accounts, the quantum of goods purchase would be sold as such in the same vehicle with a meager value addition less than 1% but there would not be actual involvement of goods at all and these type of activities enable the parties involved to circulate undue ITC among themselves and other groups.
d) The business carried by the dealer at this end is a typical example of bill trading activity where there is no actual movement of goods at all proved by way of payment of transportation charges and loading / unloading charges.
e) This kind of bill trading activities use to discourage genuine tax payers and set a negative example to the business world, as to show that should not be done. Hence, the claim of ITC amounting to Rs.4,44,91,567/- is not in order and hence, liable to be reversed.
f) The claim of ITC being ingenuine, penalty u/s 27(4) already levied in the order dated 17.09.2021 is also confirmed.”

7. After having come to the said conclusion, the Revenue decided to reverse the input tax credit to the tune of Rs.4,44,91,567/- and imposed a penalty under Section 27(3) and

27(4) of the Act with interest under Section 42(3) of the Act to the extent of 4,44,91,567/-. Therefore, the levy of tax on stock difference was dropped and therefore the total due payable by the petitioner dealer has been mentioned in the assessment order dated 25.01.2022, which is under challenge in this writ petition.

8. Heard Mr.R.Kumar, learned counsel for the petitioner who would submit that, pursuant to the earlier remand order passed by this Court, when notice was issued by the Revenue, only general documents which are available with the petitioner were asked for and those documents were produced. When that being so, without giving any clue in the show cause notice with regard to the sales effected between the petitioner concern and sister concern now a new reason has been found out by the Revenue to reverse the input tax credit, for which no opportunity was given to produce any documents by the petitioner at the time of giving show cause notice and hence the impugned order is vitiated, he contended.

9. In this context, he would further submit that, ground No.7 of the affidavit filed in support of this writ petition also would support this aspect and therefore, on that ground the impugned order is liable to be interfered with, he contended.

10. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent Revenue.

11. After the remand order passed by this Court, two times opportunity was given to the petitioner and twice notices were given and both times the responses have been given by the petitioner dealer.

12. First time, the documents sought for by the Revenue had been given. When further time was sought for especially to substantiate the movement of goods from seller to buyer, those transport documents were sought for and the same were not filed by the petitioner by stating the reason that, both buyer and seller are located in the same campus ie., sister concern and hence there was no separate movement or transportation and no separate charges had been incurred by the seller dealer or by the petitioner in transporting the goods.

13. Only based on this stand taken by the petitioner dealer, the Revenue after having considered the said documents filed by them, has come to the conclusion, of course rightly, that this kind of goods movement between two sister concerns which are located in the same campus is nothing but a bill trading.

14. In this context, they pointed out that 90% of their purchases have been effected from their sister concern Tvl.SLO Industries Ltd., amounting to Rs.76,28,07,935/- out of their total purchase value of Rs.89,19,32,756/- which is situated in the same business premises occupied by the dealer, where there have been no movement of goods as accepted by the dealer himself.

15. Therefore, the Revenue has come to a further conclusion that, this type of purchases / sales between group companies / related persons situated within the same premises without actual movement of goods is the typical model for bill trading activities, where there would be no bank statements, proper entries in Annexures to Form I returns and ledger accounts, the quantum of goods purchase would be sold as such in the same vehicle with a meager value addition less than 1% but there would not be actual involvement of goods at all and these type of activities enable the parties involved to circulate undue ITC among themselves and other groups.

16. This reasoning found out, based on the records, which were produced by the petitioner dealer, in the considered opinion of this Court, cannot be said to be a conclusion arrived at without any documents.

17. When goods movements were asked for, for which the transport documents were directed to be produced, the reason stated for non production of such documents by the dealer is that, the goods movement was between the purchaser and seller, which were sister concerns located in the same premises , then it is clear to come to a safe conclusion as has been arrived at by the Revenue, which is reflected in Para 7 of the impugned order. Therefore, this Court has no hesitation to hold that the impugned order is fully justifiable and sustainable and there is no reason, whatsoever available before this Court to show its indulgence for interfering with the said impugned order.

18. The petitioner also seems to have not filed any appeal against the impugned order and since it is also canvassed on merits before this Court, that has also been dealt with, which is inevitable, because of the points raised by the learned counsel for the petitioner.

19. For all the above reasons, this Court is of the view that the impugned order is to be sustained and the writ petition is liable to be rejected. Accordingly, the writ petition is

dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

KST

To

The Assistant Commissioner (ST)
Thiruvottiyur Assessment Circle
Integrated Commercial Taxes Complex
32, Elephant Gate Bridge Road, Chennai-3.

+1cc to M/s.R.Kumar, Advocate, S.R.No.27428

+1cc to the Special Government Pleader (Taxes), S.R.No.27408

W.P.No. 9659 of 2022

SS(CO)
SU(26/04/2022)