IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.17522, 17529, 17534 and 17538 of 2022
and
WMP.Nos.16808 and 16810 of 2022

M/s.Merck Life Science Private Limited,
(Represented by Mr.Mangesh Dattatray Wagle,
Manager-Indirect Tax)
No.2, TASS Industrial Estate,
SIDCO, Ambattur,
Chennai – 600 098. ...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST),
Ambattur Assessment Circle,
Integrated Commercial Taxes and Registration Building,
Room No.322, III Floor,
Nandanam,
Chennai – 600 035. ...Respondent in all W.Ps.

Prayer in W.P.No.17522 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN:3386301827/2015-16 dated 15.05.2022, quash the same, insofar as, it relates to, disallowance of sales returns, and levy of tax on price difference.

Prayer in W.P.No.17529 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN:3386301827/2016-17 dated 15.05.2022, quash the same, insofar as, it relates to, disallowance of sales returns, and levy of tax on price difference, liability under Section 13 of the Tamil Nadu Value Added Tax Act, 2006 being a sum of Rs.96,58,306.07/- and Rs.32,23,123/-, levy of tax on sale of scrap, levy of tax on the ground of asset deletion and sales tax payable and penalty thereon.

Prayer in W.P.No.17534 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in TIN:33386301827/2015-16 dated 15.06.2022, quash the same, while the respondent herein to re-dispose the application dated 19.05.2022, filed on 26.05.2022, for the assessment year 2015-16.

Prayer in W.P.No.17538 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records on the files of the Respondent herein in TIN:33386301827/2016-17 dated 15.06.2022, quash the same, while the respondent herein to re-dispose the Application dated 19.05.2022, filed on 26.05.2022, for the assessment year 2016-17.

In all W.Ps.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

COMMON ORDER

Mr.C.Harsha Raj, learned Additional Government Pleader accepts notice for the respondent and is armed with instructions to proceed with the matter even at this juncture. Hence, by consent of both learned counsel, these Writ Petitions are taken up for final disposal even at the stage of admission.

2. The challenge is to orders of assessment in W.P.Nos.17522 and 17529 of 2022 for assessment years 2015-16 and 2016-17, both dated 15.5.2022, passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in

short 'Act'.). The remaining Writ Petitions, viz., W.P.Nos.17534 and 17538 of 2022, challenge orders rejecting the rectification applications, both dated 15.06.2022 and also seek mandamus directing the respondent to re-dispose the rectification applications filed under Section 84 of the Act for the purported errors apparent on the face of record

3. The main ground agitated by the petitioner is violation of principles of natural justice. Show cause notice was issued on 03.02.2022, wherein, in conclusion, the Officer calls for objections, if any, to the proposals contained in the notice, to be filed within 15 days of receipt of the notice under threat that the proposals would be confirmed, if there is no appearance on the part of the assessee.

4. The petitioner avers and states in affidavit filed in support of the Writ Petitions that its authorised representative had approached the respondent on 12.05.222 at 3.00 p.m. requesting for additional time for making submissions and for furnishing supporting documents. According to the petitioner, the officer had orally agreed to the request stating that he would await information till 20.05.2022.

5. There is no document evidencing either the request made by the petitioner or the undertaking alleged to have been given by the respondent and Mr.Harsha, upon instructions, would vehemently deny that such an exchange

had transpired.

6. Be that as it may, this is a case where the respondent has not afforded an opportunity of personal hearing to the petitioner as is mandated both in the interests of integrity of the procedure followed for assessment as well as vide Circulars issued by the Special Commissioner/Commissioner of Commercial Taxes instructing the authorities to ensure that assessees are heard prior to framing of an assessment.

7. Thus, even proceeding on the basis that the petitioner has not honoured notice dated 03.02.2022 and has not appeared before the officer, it was still incumbent upon the officer to have issued a notice of personal hearing fixing date and time prior to finalisation of assessment.

8. In light of the fact that this has not been done so, the impugned orders of assessment, both dated 15.05.2022 suffer from violation of principles of natural justice and are set aside.

9. The petitioner is permitted to appear before the authority on Friday, the 22nd of July, 2022 at 10.30. a.m., without awaiting any further notice in this regard. The petitioner is also granted liberty to file written submissions and supporting documents in response to the assessment proposals already conveyed and upon consideration of the submissions made orally and in writing, if any, orders of assessment shall be passed de novo by the authorities

within a period of eight (8) weeks from date of personal hearing.

10. As far as the relief sought for in W.P.Nos.17534 and 17538 of 2022 is concerned, in light of and consequent upon the setting aside of the orders of assessment, the impugned orders disposing the Section 84 applications would have to go as well and are set aside.

11. W.P.Nos.17522 and 17529 of 2022 stand disposed as above and W.P.Nos.17534 and 17538 of 2022 stand dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

12.07.2022

sl
Index : Yes/No
Speaking Order/Non speaking Order

To

The Assistant Commissioner (ST),
Ambattur Assessment Circle,
Integrated Commercial Taxes and Registration Building,
Room No.322, III Floor,
Nandanam,
Chennai – 600 035.

DR.ANITA SUMANTH, J.
sl

W.P.Nos.17522, 17529, 17534 and 17538 of 2022
and
WMP.Nos.16808 and 16810 of 2022

12.07.2022