IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **26.10.2022**

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.28340 of 2022

and W.M.P.No.27648 of 2022

Tvl.PPG Asian Paints Pvt Ltd.,
Rep. by its Authorized Signatory,
No.1/103, P.H.Road, Madhuravoyal,
Vanagaram, Chennai – 600 095.

Now at
4th Floor-Prince Towers,
No.25/26, College Road,
Nungambakkam,
Chennai – 600 034. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Vanagaram Assessment Circle,
No.4/109, Chennai Bangalore Highway,
Varadharajapuram,
Poonamallee, Chennai – 600 123. … Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the impugned order of re-assessment in TIN33781343355/2010-2011 dated

22.08.2022 from the files of the respondent herein, quash the same.

For Petitioner : Aparna Nandakumar

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate

ORDER

The present writ petition has been filed by the petitioner for issuance of Writ of Certiorari calling for the records of the impugned order of re-assessment in TIN33781343355/2010-2011 dated 22.08.2022 from the files of the respondent herein, quash the same.

2. The case of the petitioner is that the petitioner is a Private Limited Company engaged in manufacture and trade in automotive coatings paints and chemicals having registered under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act, 2017")/ Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as the "TNGST Act, 2017") with GST Registration No.33AAACA8832H1ZV. The petitioner herein was a registered dealer with TIN No.33781343355 under the provisions of the erstwhile Tamil Nadu Value Added Tax Act, 2006

(hereinafter referred to as the "TNVAT Act, 2006") and an assessee on the files of the respondent herein.

2.1. The petitioner filed returns for the TNVAT assessment year 2010-11, claiming ITC on SEZ sales, ITC on Stock Transfer and interstate sales and also concessional levy on sale of Industrial inputs, which was finally assessed on a total turnover of Rs.1,86,20,25,081/- and taxable turnover of Rs.1,84,74,53,359/- respectively. The respondent herein levied tax on the sales return which although are not beyond the period of six months yet are in the different financial year and denied the concessional levy on the sale of industrial inputs in the absence of declaration certificates required to be produced as per Rule 6(3) (b) of the Tamil Nadu Value Added Tax Rules, 2007 (hereinafter referred to as TNVAT Rules, 2007) for a turnover of Rs.4,58,19,184/- Further, by order in TIN No.33781343355/2010-11 dated 25.06.2012 read with rectified order in TIN No.33781343355/2010-11 dated 20.07.2012, the respondent confirmed the tax liability of Rs.55,53,088/-.

2.2. Questioning the aforesaid orders, the petitioner filed an appeal before the Appellate Deputy Commissioner (CT) – VI (FAC), Chennai (hereinafter referred to as the First Appellate Authority). By appeal order in A.P.No.120/2012 (VAT) dated 29.07.2013, the First Appellate Authority remanded the matter to the respondent for fresh consideration with specific directions to consider the documents and declaration forms submitted by the appellant therein in support of their contentions and claim of concessional levy. The respondent, by its consequential order in TIN No.33781343355/2010-11 dated 22.03.2017 gave effect to the specific directions of the First Appellate Authority, by accepting the declaration forms with regard to interstate SEZ sales and also the certificates with regard to the sale of industrial inputs and issued refund order in Form P for an amount of Rs.23,87,147/- being the tax paid in excess. Thereafter, the respondent issued a pre-revision notice in TIN No.33781343355/2010-11 dated 05.10.2020, proposing once again to reverse the ITC on interstate sales without C Forms and on Stock transfer not covered by declaration and also proposed to disallow the concessional rate of tax claimed by the petitioner on the sale of industrial inputs for a sales turnover of Rs.1,50,97,76,356/- for the first time, though the order was passed as early as on 25.06.2012, based on enforcement audit. Further, the respondent also sought explanation from the petitioner on mismatch of turnovers from the web report of the petitioner's sellers.

2.3. Further the case of the petitioner is that they have submitted detailed replies dated 27.10.2020, 19.01.2021, 26.03.2022, 11.04.2022 and 25.04.2022, containing interalia that the proposal to reverse ITC on interstate sales turnover for want of C forms and on stock transfer for want of Form F declarations was not sustainable for the reason that the ITC with respect to these two issues has already being reversed in the earlier assessment orders and that the value of the reversal of ITC for which the declaration forms are alleged has not being mentioned in the notice and the proposal to disallow the concessional rate of tax at 4% on sale of industrial inputs, the petitioner had already submitted declaration forms for the turnover of Rs.4,58,19,184/- which was the only proposal raised in the earlier revision order dated 25.06.2012 and which had been submitted when the consequential order in TIN No.33781343355/2010-11 dated 22.03.2017 in pursuance of the directions of the First Appellate Authority had been passed and the same was found to be in order.

2.4. The petitioner further submitted that they sought for additional time as they were in the process of collecting information from their sellers for cross verification and moreover, the petitioner the mismatch in check post was only due to incorrect check post data, placing of wrong decimals, repetition of stock transfer inward and stock transfer outward check post. Consequently, the respondent passed an impugned order in TIN No.33781343355/2010-11 dated 22.08.2022 and the same was received by the petitioner on 30.09.2022. The said impugned order has contained several mistakes, the petitioner has filed rectification petition under Section 84 of the TNVAT Act, 2006 on 02.10.2022 and requested the respondent to pass orders in the rectification petition, however, no order was passed. Challenging the impugned order, the petitioner has filed this writ petition with the aforesaid prayer.

3. Learned counsel for the petitioner would submit that as against the present impugned assessment order dated 22.08.2022, the petitioner has filed a rectification petition under section 84 of the TNVAT Act, 2006, before the

respondent, if the rectification petition is decided, the present impugned order is no longer in existence. Therefore, she prayed this Court to issue a direction to the respondent to decide on the rectification petition within a time frame to be fixed by this Court.

4. Learned Government Advocate appearing for the respondent would submit that the rectification petition will be decided in the manner known to law.

5. Heard the learned counsel on either side and perused the materials placed on record.

6. In view of the consent view expressed by the learned counsel on either side, this court is inclined to give direction to the respondent to decide the rectification petition filed under Section 84 of the TNVAT Act, 2006 and pass appropriate order on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. Further, this

Court directs the respondent not to enforce the assessment order dated 22.08.2022, till the disposal of the rectification petition.

7. With the aforesaid directions, this writ petition is closed. No costs. Consequently, connected miscellaneous petitions is closed.

26.10.2022

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Index : Yes/No
Speaking Order : Yes/No

M.DHANDAPANI,J.

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To:

The Assistant Commissioner (ST),
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Poonamallee, Chennai – 600 123.

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