IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.09.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.4459, 4460, 4461 & 4472 of 2019
& WMP.Nos.5033, 5035, 5044 & 5054 of 2019

Ultra Tech Cement Ltd.,
Represented by its Manager,
Sushil Singhania,
Chitheri Villave,
Arakkonam Taluk. … Petitioner in all W.P.'s

Vs

The State Tax Officer,
Arakkonam. … Respondent in all W.P.'s

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN No.33644301835/2006-2007 dated 25.01.2019, TIN No.33644301835/2008-2009 dated 29.01.2019, TIN No.33644301835/2007-2008 dated 28.01.2019 & TIN No.33644301835/2009-2010 dated 30.01.2019 and quash the same.

(In all W.P.'s)

For Petitioner : Mr.N.Prasad

For Respondent : Ms.Amirtha Dinakaran,
Government Advocate

O R D E R

The petitioner, a company registered under the provisions of the Companies Act, 2013 and engaged in the manufacture of cement, has challenged notices dated 25.01.2019, 28.01.2019, 29.01.2019 & 30.01.2019, issued under the provisions of the Tamil Nadu Value Added Tax Act 2007, (in short 'Act'), for four periods, 2006-2007, 2007-2008, 2008-2009 and 2009-2010.

2.Two issues arise, one relating to taxability of fly ash procured from the Tamil Nadu Electricity Board (TNEB) and secondly, exemption claimed in respect of supplies to be made to Special Economic Zones (SEZ). By way of Notification dated 14.09.1999, there was a ban imposed by the Central Government in transacting in fly ash, for preservation and protection of the environment.

3.However, since fly ash is a natural waste from power stations including those managed by the TNEB, it was necessary to take measures to dispose the same. Fly ash is one of the inputs in the manufacture of cement and the petitioner had entered into a Memorandum of Understanding (MoU) dated 21.02.2022 with the TNEB for procurement of the same for use in the manufacture of cement.

4.The parties contracted for removal of the fly ash @ Rs.60/- per ton as a service charge payable to TNEB. According to the petitioner the service charge does not assume the character of sale price and the transaction qua the parties is in consonance with, and not in violation of, Government Notification dated 14.09.1999. Thus, the primary argument advanced by the petitioner before the authority is that the service charge paid does not amount to sale consideration and there is no liability to purchase tax thereupon.

5.The alternate argument relates to the valuation of the fly ash. According to the petitioner, the sale price should be the value per ton as per the MOU entered into between the parties. A certificate of a chartered accountant has also been relied upon in this regard. Learned counsel takes me to earlier orders passed by this Court in W.P.Nos.8061 to 8067 of 2014 dated 21.03.2014 wherein the petitioner had made similar submissions as before me now on the aspect of valuation.

6. The orders of assessment impugned therein, had come to be set aside and the respondent directed to hear the petitioner and pass orders afresh. Orders had come to be passed reiterating the same valuation that came to be challenged before this Court in W.P.Nos.26312 to 26318 of 2015. Those writ petitions came to be disposed by order dated 27.09.2016 wherein the orders impugned there were set aside and the respondents directed to re-do the issue de novo. At paragraph No.16, learned Judge states as follows:

> *"16. In the light of the above, the Writ Petition is allowed and the impugned order is set aside insofar as the findings rendered by the Assessing officer on the aforesaid two heads and the assessment shall be re-done, after affording an opportunity of personal hearing by clearly appreciating the scope of the agreement between the petitioner and the TNEB and the legal position which is prevailing as on date. No costs. Consequently, connected Miscellaneous Petitions are closed."*

7.The second issue agitated relates to an exemption claimed by the petitioner in light of G.O.No.193 of 2006 dated 30.12.2006 in respect of supplies affected to developers of Special Economic Zones (SEZ).

8.The impugned proceedings were triggered by an audit slip wherein there was reference to Section 18 of the Act. The petitioner has specifically disavowed all reference to Section 18 stating that the claim of exemption is not under Section 18 but only under the Government Order as aforesaid. Despite the multiple rounds of prior litigation in this matter, in the present impugned notices as well, the assessing authority merely repeats the same proposals contained in the audit note.

9. The officer proposes, in the impugned notice, to assess the value of the material taking the price at which other suppliers have effected the sale, as a base. While he initially states that the actual turnover must be brought to tax, he goes on to state that the value of fly ash at which other suppliers have supplied the goods to the cement industry will be adopted as the basis of assessment, notwithstanding that the petitioner has set out the actual value at which the fly

ash has been procured duly supported by a certificate from the chartered accountant.

10.As regards the supply to developers of SEZ, he again reiterates that the ingredients of Section 18 of the Act have not been satisfied. Despite the settled position that an assessment should proceed on an independent application of mind by the officer, though naturally, he would take note of the objections raised by audit, and inspite of the submissions of the petitioner that no claim has been made in terms of Section 18, the authority repeatedly refers to Section 18.

11. In light of the reiteration of the same errors by the assessing authority to which learned Government Pleader will accede, the impugned notice shall not be pursued. Let a fresh notice be issued and if and when such notices are issued, responses will be filed by the assessee and assessments be completed expeditiously.

12.The respondent is permitted to issue notices within four (4) weeks from today, bearing note of the flaws pointed out above. If no notice is issued within the aforesaid time frame, the returns of the petitioner for the periods in question will be deemed to have been accepted.

13.These writ petitions are disposed as above. No costs. Consequently, connected miscellaneous petitions are closed.

30.09.2022

kbs
Index : Yes
Speaking Order
Note:Registry is directed to issue order copy on 10.10.2022

To
The State Tax Officer,
Arakkonam.

DR.ANITA SUMANTH, J.

kbs

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& WMP.Nos.5033, 5035, 5044 &
5054 of 2019**

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