BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.10654 and 10657 of 2020
and
W.M.P.(MD) Nos.9383 and 9386 of 2020

M/s.Veenus Fireworks Industries,
represented by its Partner A.Vasantha Vikash,
No.8/217 G, Anuppankulam,
Sivakasi, Virudhunagar District.

... Petitioner in both W.Ps.,

/vs./

The State Tax Officer-II,
Sivakasi II Assessment Circle,
Commercial Tax Buildings,
Sivakasi.

... Respondent in both W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records in assessment order issued by the respondent in CST No.1069865/2012-13 and TIN No.33825982552/2012-13 dated 12.02.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act.

For Petitioner in both W.Ps., : Dr.A.Thiyagarajan Senior Counsel for Mr.S.Karunakar

For Respondent in both W.Ps., : Mr.V.Nirmal Kumar Government Advocate

COMMON ORDER

These writ petitions have been filed for a Certiorarified Mandamus to call for records of the assessment order passed by the respondent in CST No.1069865/2012-13 and TIN No.33825982552/2012-13 dated 12.02.2020, to quash the same and to direct the respondent to proceed with the revision of assessment after the completion of the adjudication under the Central Excise Act, 1994.

2.By the impugned orders, the respondent has redetermined the taxable turn over and the tax payable by the petitioner for the assessment year 2012-13 both under the TNVAT Act, 2006 and the Central Sales Tax Act, 1956. The completed assessment of the petitioner was sought to be reopened based on the information furnished by the Central Excise Department. The Central Excise Department appears to have concluded that the petitioner had indulged in large scale evasion of excise duty without payment of tax. The Central Excise Department relied on documents /records/ informations retrieved from the CPUs/laptops seized from the business premises of the petitioner and also from the premises of the petitioner tax consultant. Accordingly, the taxable turn over of the petitioner was re-quantified tax demanded.

3.The learned Senior Counsel for the petitioner fairly submits that the order passed pursuant to the show cause notice issued by the Excise Authority has culminated in confirmation of demand and that the petitioner is in appeal before the CESTAT Chennai.

4.It is submitted that the impugned orders passed by the respondent based on the information without an independent exercise is contrary to the decision of the Gujarat High Court in the case of ***Futura Ceramics Private Limited and another Vs. State of Gujarat and others*** reported in ***2012 (12) TMI 955***. In this connection, a reference was made to the following passage from the aforesaid decision:-

> "*It may be that the raid carried out by the Excise duty and the material collected during such proceedings culminating into issuance of a show cause notice for recovery of unpaid excise duty and penalty in a given case sufficient to re -open previously closed assessment. In this case, however, we are not called upon to judge this issue and would therefore not give any definite opinion. The question, however, is whether on a mere show cause issued by the Excise Department, the Sales Tax Department can make additions for the purpose of collecting tax under the Gujarat Value Added Tax Act without any further inquiry. If the Assistant Commissioner of Commercial Tax has utilized the material collected by the Excise Department; including the statements of the petitioner and other relevant witnesses and had come to an independent opinion that there was in fact evasion of excise duly by clandestine removal of goods, he would have been justified in making additions for the purpose of VAT Act. In the present case, however, no such exercise was undertaken. All that the Assessing Officer did was to rely on the show cause notice issued by the Excise Department. Nowhere did he conclude that there was a case of clandestine removal of goods without payment of tax under the VAT Act. Merely because the Excise Department issued a show cause notice, that cannot be a ground to presume and conclude that there was evasion of excise duty implying thereby that there was also evasion of tax under the VAT Act. It is not even the case of the Department that such show cause notice proceedings has culminated into any final*

order against the petitioner. We wonder what would happen to the order of re -assessment, if ultimately the Excise Department were to drop the proceedings without levying any duty or penalty from the petitioner."

5.Opposing the prayer, the learned Government Advocate for the respondent submits that the impugned orders are well reasoned and require no interference. It is submitted that the petitioner has an alternate remedy before the Deputy Appellate Commissioner against the impugned orders under the provisions of TNVAT Act, 2006 and therefore, these writ petitions are liable to be dismissed. It is further submitted that once a statutory authority under the Central Excise Act, 1944 has come to a fair conclusion regarding the turn over and the assessable value, the same will apply for requantification of VAT and CST payable by the petitioner and therefore, the learned Government Advocate for the respondent submits that there is no merits in this writ petition.

6.I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Government Advocate for the respondent. I have also perused the impugned orders passed by the respondent under the respective assessment orders on 12.02.2020 under the TNVAT Act, 2006 and Central Sales Tax Act, 1956 for the assessment year 2012-13.

7.The demand preceded pre-assessment notices, which were issued based on the information gathered from the respondent's counterpart in the Central Excise Department. The fact remains that the Central Excise Department has confirmed the demand proposed in the show cause notice issued under Section 11 A of the Central Excise Act, 1944. The records of the Central Excise Department would indicate the quantum of manufacture and therefore they are relevant for arriving at the sales turn over, which has been suppressed by the petitioner. Hence, p*rima facie* there is no merits for interference at this stage.

8.In view of the above, I am inclined to dismiss these writ petitions by giving liberty to the petitioner to file a statutory appeal before the Deputy Appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order. The Deputy Appellate Commissioner shall however keep the proceedings pending and await for the orders to be passed by the CESTAT, Chennai, in the statuary appeal filed by the petitioner against the orders determining the demand, which would give the correct indication of the turn over, which has escaped assessment. In case, the petitioner succeeds, to that extend, the demand can be pre-worked and requantified by the Deputy Appellate Commissioner. While filing the appeal before the Deputy Appellate Commissioner, the petitioner shall furnish the details of the appeal filed before the CESTAT, which is said to be pending as on date. The Deputy Appellate

Commissioner or the State or the Appellate Authority under the new regime shall be kept intimated about the development of the Excise appeal once in a period of 6 months by the petitioner.

9.The writ petitions stand dismissed, in terms of the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Mm

TO

The State Tax Officer-II,
Sivakasi II Assessment Circle,
Commercial Tax Buildings,
Sivakasi.

Copy to

1.The Section Officer, E.R.Section
Madurai Bench of Madras High Court, Madurai

2. The Section Officer, Writ Section
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-12900[F] dated 18/03/2022)

+1 CC to M/s.SPL GP (SR-13006[F] dated 18/03/2022)

W.P.(MD) No.10654 and 10657 of 2020
17.03.2022

SG(CO)
KB(22.04.2022) 4P 6C