IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.1305, 1309, 1311, 1314 & 1318 of 2020
and W.M.P.Nos. 1566, 1570, 1571, 1573 & 1575 of 2020

M/s.Mondelez India Foods Pvt Ltd.,
1st Floor Tower A 29, Bannari Amman Towers,
Radhakrishnan Salai, Mylapore,
Chennai, Tamil Nadu 600 004.
Rep. By its Authorised Signatory,
E.N.Prabakaran .. Petitioner in all writ petitions

vs

1.State of Tamil Nadu,
Through its Secretary (Revenue),
Department of Revenue,
Namakkal Kavingar Maaligai,
Fort St.George, Chennai – 600 009.

2.The Joint Commissioner (CT), Appeals,
PAPJM Annexe Building, III Floor, Greams Road,
Chennai – 600 006.

3.The Deputy Commissioner (CT) – III,
Large Tax Payers Unit, Chennai – 600 008. .. Respondents in all writ peitions

Prayer in W.P.No.1305 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned order bearing TNVAT AP No.65/2018 (2011-12) dated 15.11.2019 passed by respondent no.2 and quash the same, and consequently direct the respondent no.2 to consider the submissions made by the petitioner / merits of the petitioner's case.

Prayer in W.P.No.1309 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned order bearing TNVAT AP No.61/2018 (2012-13) dated 15.11.2019 passed by respondent no.2 and quash the same, and consequently direct the respondent no.2 to consider the submissions made by the petitioner / merits of the petitioner's case.

Prayer in W.P.No.1311 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned order bearing TNVAT AP No.62/2018 (2013-14) dated 15.11.2019 passed by respondent no.2 and quash the same, and consequently direct the respondent no.2 to consider the submissions made by the petitioner / merits of the petitioner's case.

Prayer in W.P.No.1314 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned order bearing TNVAT AP No.63/2018 (2014-15) dated 15.11.2019 passed by respondent no.2 and quash the same, and consequently direct the respondent no.2 to consider the submissions made by the petitioner / merits of the petitioner's case.

Prayer in W.P.No.1318 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned order bearing TNVAT AP No.64/2018 (2015-16) dated 15.11.2019 passed by respondent no.2 and quash the same, and consequently direct the respondent no.2 to consider the submissions made by the petitioner / merits of the petitioner's case.

For Petitioner	:	Mr.Karthik Sundaram (in all writ petitions)
For Respondents	:	Ms.Amrita Dinakaran Government Advocate (Taxes) (in all writ petitions)

COMMON ORDER

This is a common order passed in a batch of five writ petitions relating to the period 2011 – 12 to 2015 – 2016 (periods in question).

2. What is assailed is an order rejecting the request of the petitioner for rectification of assessment sought for under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short, 'Act'). The facts and the dates involved are common across writ petitions.

3. The petitioner is a limited company engaged in the business of manufacture and sale of confectionery candy products and other proprietory products and is a dealer under the provisions of the Act. Assessments had been framed for the periods in question bringing to tax the entirety of the turnover at an enhanced rate of tax as claimed by the petitioner.

4. In the course of the original assessment proceedings, the petitioner had supplied the details of turnover and admittedly there is nothing on record to indicate that any bifurcation of the turnover between the products manufactured and sold had been furnished to the attention of the Assessing Officer. The assessments

have been completed and the issue with which we are concerned in these writ petitions revolve around the differential rate of taxes.

5. The difference of opinion between the parties was that the petitioners claim that one of their products, TANG was existable to taxes at the rate of 4% and thereafter 5%, whereas it is the stand of the respondents that the rates applicable would be 12.5% and thereafter 14%. It is not the rate per se which is in dispute before me.

6. The Assessing Authority concluded the assessments adverse to the petitioner confirming the higher of the rates as applicable to the turnover. In doing so, the entirety of turnover of the petitioner was subject to enhanced rate of 12.5% / 14%.

7. The petitioner filed appeals before the first appellate authority. Even here, the grounds of appeal do not have any distinction qua the turnover itself and the petitioner has proceeded on the basis that the flaw in the assessment order relates to the adoption of enhanced rate of tax. No grounds as regards the applicability of the rate to only portion of turnover and not the entirety of the turnover, was raised at the original instance.

8. Pending appeals, however, the petitioner awoke to the position that the turnover of the petitioner related to different products. In this regard, my attention is drawn to the VAT Audit Report for the period 2012 – 2013 to 2015 – 2016 that had been placed by at 1 – 90 of compilation dated 15.07.2020.

9. One of the trading accounts is brought to my attention, specifically the figure of Rs.67,17,11,558/- which is the turnover for the period ending 31.3.2015. There is a break-up which is set out therein which appears to indicate that the aforesaid turnover relates not only to TANG but also to Halls and Bytes, two other products of the petitioner.

10. On the premise thus that the enhanced rate should, if at all, apply only to the turnover attributable to TANG, the petitioner pending appeal before the appellate authority, filed an additional submission adopting this argument. The additional submission is dated 23.1.2019 and therein the specific contention raised is the alternate contention that if at all enhanced rate were to be confirmed, it would be applicable only qua the turnover from sales of TANG.

11. Learned Government Advocate was specifically asked to confirm whether this additional submission is part of the record and on instructions received from the Officer, she confirms that it is indeed part of their records.

12. Notices were issued thereafter and submissions filed by the petitioner culminating in an appellate order dated 03.05.2019. It is, at this stage, that the error arises in the procedure followed by the authority insofar the appellate order dated 03.05.2019 omits to consider the additional submission made on 23.01.2019.

13. The fact that such submissions were on his record when the appellate order was passed is not in dispute and hence in my considered view, the order would attract the provisions of Section 84 of the Act dealing with power to rectify an error apparent on the face of record. This power would bind assessing, appellate and revisional authorities and thus non-consideration of the additional submissions made on 23.01.2019 would give rise to an error in order dated 03.05.2019.

14. The petitioner sought rectification under Section 84 that has come to be rejected by the officer on 15.11.2019 on the ground

that there was no discussion in the order dated 03.05.2019 and hence no rectifiable error. This conclusion of the appellate authority is clearly contrary to law insofar as the very non-consideration of submissions dated 23.01.2019, would constitute an error apparent on record liable to be rectified under Section 84 of the Act. In light of this, the impugned orders need to be set aside.

15. The petitioner will appear before the appellate authority on 24.03.2023 at 10.30 a.m. with materials in support of the request of rectification and without anticipating any notice afresh for the hearing scheduled as aforesaid. After hearing the petitioner, orders shall be passed on the Section 84 application within a period of four weeks from the date of personal hearing as fixed aforesaid.

16. Impugned orders are set aside and these writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

09.03.2023

Index:Yes
Neutral Citation:Yes
ssm

To

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Department of Revenue,
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DR. ANITA SUMANTH,J.

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