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W.P.No.6926 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6926 of 2022

and

W.M.P.Nos.6968 & 6971 of 2022

M/s.R.K.Ganapathy Chettiar,
rep. by its Partner,
138, Mathur Road,
Veeranampalayam,
Kangeyam.

.. Petitioner

Vs.

1.The Assistant Commissioner (ST),
Kangeyam Assessment Circle,
Kangeyam.

2.The Branch Manager,
M/s. State Bank of India,
Kangeyam Branch,
Old No.70, New No.158, Chennimalai Road,
Kangeyam – 638 701.

3.The Branch Manager,
M/s. Axis Bank,
No.5, Dindgul Road,
Off Jawahar Bazaar,
Karur – 639 002.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari, to call for the records of the 1st respondent in



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his proceedings in ROC:1714/2017/A3, quash the bank attachment notice dated 10.03.2022 issued therein.

For Petitioner : Mr.P.V.Sudakar
For R1 : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The petitioner has challenged the impugned recovery notice issued by the 1st respondent dated 10.03.2022 bearing ROC:1714/2017/A3.

2.This is the 3rd round of litigation before this Court. The petitioner has suffered assessment orders dated 29.05.2017 for the assessment year 2012-2013 and 2015-2016 and an assessment order dated 02.06.2017 for the assessment year 2013-2014.

3.The following three issues were the subject matter of these three assessment orders:

- (i)Demand under Section 19(2)(v) of the TNVAT Act,
- (ii)Invisible loss and
- (iii)Deficit stock.



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4.The petitioner challenged the same before this Court in W.P.Nos.16000 to 16004 of 2017. This Court passed an order dated 18.09.2017 at the time of admission and set aside the orders and remitted back to the respondents to pass fresh order. The said order was passed after hearing the counsel for petitioner and respondents. The issues involved are narrated in paragraph No.3 of the said order. It reads as under:

“3.The two issues, which arises for consideration in the matters, are as follows:-

- (i) whether the percentage of loss of materials (invisible loss) as computed by the respondent is correct; and
- (ii) with regard to effect of Section 19(2)(5)* [*19(2)(v)] of the Act.”

5.In paragraph Nos.5, 6 & 7, the Court observed as under:

“5.However, in the instant case, such an exercise has not been done. Though on the date when the impugned order was passed, the decision in the case of ***Interfit Techno Products Ltd. Vs.Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another*** was very much available, wherein the impugned order was set aside and the matter was remanded back to submit objections and the assessment was ordered to be re-done.



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6. So far as the second issue is concerned, the Learned counsel appearing for the respondent submitted that writ appeals have been preferred by the State, against the order in the case of ***Everest Industries Limited Vs. State of Tamil Nadu And Another***, and the appeals are yet to be numbered.

7. Be that as it may, as on date, the writ appeals filed by the state challenging the correctness of the decision in ***Everest Industries Limited Vs. State of Tamil Nadu And Another***, are yet to be numbered and mere pendency of such appeals cannot operate as stay of orders in ***Everest Industries Limited Vs. State of Tamil Nadu And Another***. Therefore as on date, the said order holds good. Thus, on the second aspect also, the assessment requires to be re-done.”

6. In paragraph No.8, this Court set aside the assessment orders impugned in these Writ Petitions. Thereafter, the respondent issued fresh pre-revision notices for these assessment years on 09.03.2021 while dropping the demand in so far as 19(2)(v) of the TNVAT Act in view of the decision of the learned Single Judge in ***Everest Industries Limited Vs. State of Tamil Nadu and another***.

7. The petitioner filed a common objection which ultimately culminated in assessment orders dated 08.06.2021 for these assessment years. In all these orders, issue was confined only to invisible loss which



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was subject matter of the 2nd round of litigation before this Court in W.P.Nos.14166, 14176, 14171, 14173 & 14175 of 2021.

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8.This Court following the decisions rendered earlier, thus allowed the Writ Petition filed by the petitioner. This has lead to third round of assessment order all dated 07.12.2021 for these assessment years, which were more or less intended to give effect to the orders passed by this Court in W.P.Nos.14166, 14176, 14171, 14173 & 14175 of 2021 dated 11.08.2021.

9.The respondents have now issued the impugned demand notice seeking to demand the amount of tax towards deficit stock of goods during these assessment years which were confirmed in the first round of assessment order dated 29.05.2017 and 02.06.2017.

10.The learned counsel for the petitioner would submit that the order that the amount confirmed on the deficit stock vide order dated 02.05.2017 and 29.05.2017 along with other issues were set aside by this Court by its order dated 18.09.2017 in W.P.Nos.16000 to 16004 of 2017. It is therefore submitted that subsequent proceedings were initiated



confined to other two issues that have been dropped in the light of the subsequent developments as stated above. Hence, it is submitted that the impugned demand is unsustainable.

11.Per contra, the learned Additional Government Pleader for the 1st respondent would submit that the order dated 18.09.2017 was confined only to two issues in paragraph No.3, which reads as follows:

“3.The two issues, which arises for consideration in the matters,are as follows:-

- (i) whether the percentage of loss of materials (invisible loss) as computed by the respondent is correct; and
- (ii) with regard to effect of Section 19(2)(5)* [*19(2)(v)] of the Act.”

and therefore, the orders that were passed by this Court should be confined only to the extent of only two issues remanding the case back to the Assessing Officer and thus, in absence of a challenge to the assessment order dated 29.05.2017 and 02.06.2017 for these assessment years, qua deficit stock stood crystallised and therefore, the impugned demand notice have been issued to the petitioner.



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12.It is submitted that the precisely for this reason, the subsequent revision notices were issued to give effect to order dated 11.08.2021 of this Court in W.P.Nos.14166, 14176, 14171, 14173 & 14175 of 2021. It is submitted that the other issue which stood confirmed long before is being enforced.

13.The learned Additional Government Pleader for the 1st respondent also would submit that these issues were also mentioned in the subsequent pre revision notice issued subsequent to passing of the order dated 18.09.2017 in W.P.Nos.16000 to 16004 of 2017 and consequential order passed pursuant to order dated 11.08.2021 in W.P.Nos.14166, 14176, 14171, 14173 & 14175 of 2021. It is therefore submitted that there is no merits in the challenge to the impugned recovery notice.

14.I have considered the arguments advanced by the learned counsel for the petitioner and learned Government Advocate for 1st respondent.

15.The order that was passed by this Court on 18.09.2017 is



obviously ambiguous. In para.no.3 of the order states that the dispute was only confined to two of the issues, which has been extracted above.

However, in paragraph No.8, the order impugned before this Court in W.P.Nos.16000 to 16004 were set aside. It was incumbent on the part of the assessee as also the revenue to have to applied for a modification of the aforesaid order. It however went unnoticed. The revenue was under the assumption that the amount stood confirmed as far as deficit stock issue was concerned while the petitioner has assumed the issue all the issues were answered as the impugned orders were set aside and case was remitted back. The Department also did not choose to issue further pre-revision notice on deficit stock which culminated in the subsequent orders referred to *supra*.

16.The issue relating to the stock deficit has not been addressed after the order was set aside by this Court on 18.09.2017 in W.P.Nos.16000 to 16004 of 2017 on account of the confusion that prevailed. Be that as it may, the issue has been alive in these proceedings, all through though the other two issue have been settled in favour of the petitioner and have been dropped. As far as deficit stock is concerned, it has be construed that the issue is still alive. Neither the Department can



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be deprived of the revenue if the amount was payable by the petitioner nor the petitioner deprived of a chance to defend itself.

17. Therefore, to balance the interest of the revenue and of the petitioner, the impugned recovery notices are quashed and the case is remitted back to the respondent to pass a fresh order as far as deficit stock is concerned. The petitioner may file a reply if any within a period of 15 days from the date of receipt of a copy of this order. The 1st respondent shall further pass a fresh order within a period of 45 days from the date of receipt of a copy of this order. Needless to state that the petitioner shall be heard before orders are passed.

18. The Writ Petition stands disposed of with the above observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

09.08.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.



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To

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