IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.20631 and 20633 of 2023
and
W.M.P.No.20008 of 2023

Royal Welding Wires Private Limited,
Represented by its Director
Ali Akbar,
No.2, Uthiremerur Road,
Maduranthakam - 603 303. ... Petitioner in both W.Ps

Vs.

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Road,
Thirukuzhukundram - 603 109. ... Respondent in both W.Ps

Prayer in W.P.No.20631 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order of the respondent passed in TIN33681681746/2015-16-II dated 25.07.2022 and quash the same and further direct the respondent to redo the assessment in accordance with law after granting opportunity of personal hearing.

Prayer in W.P.No.20633 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order of the respondent passed in TIN33681681746/2014-2015 dated 20.01.2022 and quash the same and further direct the respondent to redo the assessment in accordance with law after granting opportunity of personal hearing.

For Petitioner (In both W.Ps)	:	Mr.N.Murali
For Respondent (In both W.Ps)	:	Mr.C.Harsharaj Additional Government Pleader

COMMON ORDER

Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondent.

2. By this common order, both the writ petitions are being disposed at the time of admission after hearing the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

3. In these writ petitions, the petitioner has challenged the respective assessment orders passed for the Assessment Years 2014-2015 and 2015-2016 on 20.01.2022 and 25.07.2022.

4. As far as the Assessment Year 2014-2015 is concerned, the entire amount of tax has been recovered amounting to Rs.3,32,800/-. As far as the Assessment Year 2015-2016 is concerned, the petitioner has suffered an adverse orders for an amount of Rs.5,83,125/-.

5. It is noticed that the petitioner has filed the present writ petitions only with a view to circumvent the limitation under Section 51 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006, as even if such an appeal was filed by the petitioner, it would have been rejected as time barred and beyond the statutory period of limitation.

6. The learned counsel for the petitioner would submit due disruption caused on account of lock down imposed after the out break of Covid-19 pandemic and the petitioner has no business and most of the employees also

left employment, it took time for the petitioner to restart the business, which was stopped during pandemic period.

7. That apart, it is submitted that even after the normality was restored, the factory of the petitioner was closed between 04.01.2022 and 02.02.2022 due to certain violations by the petitioner under the Water (Prevention and Control of Pollution) Act, 1974. The factory was reopened only on 03.02.2022. It is submitted that the notice which preceded the impugned orders was issued on 21.01.2022 when the factory was closed and therefore, the petitioner was unaware of the impugned orders that came to be passed subsequently on 20.01.2022 and 25.07.2022.

8. The learned Additional Government Pleader for the respondents would submit that the writ petitions are devoid of merits and are liable to be dismissed.

9. It is therefore submitted that neither the petitioner can maintain the writ petitions nor challenge the impugned order on merits before the

Appellate Commissioner as the limitation to file the appeal has expired long before the present writ petitions were filed on 10.07.2023.

10. It is submitted that the writ petitions were even otherwise liable to be dismissed on account of latches.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

12. It is noticed that the petitioner's tax amount of Rs.3,32,800/- has already been recovered towards duty that was confirmed in the Assessment Order dated 20.01.2022 for the Assessment Year 2014-2015. The petitioner has not paid the tax that was determined vide impugned order dated 25.07.2022 for the Assessment Year 2015-2016 amounting to Rs.5,83,125/-.

13. To balance the interests of the petitioner and the revenue, this Court is inclined to dispose these two writ petitions by directing the petitioner to file a statutory appeal before the Appellate Commissioner under Section 51 of the

TNVAT Act within a period of 30 days from the date of receipt of a copy of this order together with a pre-deposit of 50% of the disputed tax.

14. Subject to such compliance, the appeal for the Assessment Year 2015-2016 shall be numbered. As far as the Assessment Year 2014-2015 is concerned, since the entire amount has been recovered, the appeal shall be numbered, if such appeal is filed within a period of 30 days from the date of receipt of a copy of this order.

15. These Writ Petitions are disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

12.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Road,
Thirukuzhukundram - 603 109.

C.SARAVANAN, J.

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