IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.26580, 26584, 26585, 26592 and 26675 of 2023
and
W.M.P.Nos.25992, 25995, 26000, 26003 and 26109 of 2023

M/s Noble Tech Industries Pvt Ltd,
Rep by its Director,
Mr.Ramesh,
No.14/2, A2, Kasturi Street,
via Kaliyapoondi,
Melpakkam Village,
Chennai – 603 402. ... Petitioner in all W.Ps.

Vs

Office of the Assistant Commissioner (ST),
Loansquare Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai – 3. ... Respondent in all W.Ps.

Prayer in W.P.No.26580 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 records on the file of the respondent in Tin:33980140833 dated 30.03.2021 for the Assessment year 2011-2012 quash the same as illegal, without jurisdiction, barred by limitation and against the principles of natural justice and fair play, contrary to the provisions of TNVAT Act and directing the respondents to allow the claim of the petitioner with respect to input tax credit for claim of burning loss in accordance with the Act and on merits.

Prayer in W.P.No.26584 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 records on the file of the respondent in Tin:33980140833 dated 30.03.2021 for the Assessment year 2012-2013 quash the same as illegal, without jurisdiction, barred by limitation and against the principles of natural justice and fair play, contrary to the provisions of TNVAT Act and directing the respondents to allow the claim of the petitioner with respect to input tax credit for claim of burning loss in accordance with the Act and on merits.

Prayer in W.P.No.26585 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 records on the file of the respondent in Tin:33980140833 dated 31.03.2021 for the Assessment year 2013-2014 quash the same as illegal, without jurisdiction, barred by limitation and against the principles of natural justice and fair play, contrary to the provisions of TNVAT Act and directing the respondents to allow the claim of the petitioner with respect to input tax credit for claim of burning loss in accordance with the Act and on merits.

Prayer in W.P.No.26592 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 records on the file of the respondent in Tin:33980140833 dated 31.03.2021 for the Assessment year 2014-2015 quash the same as illegal, without jurisdiction, barred by limitation and against the principles of natural justice and fair play, contrary to the provisions of TNVAT Act and directing the respondents to allow the claim of the petitioner with respect to input tax credit for claim of burning loss in accordance with the Act and on merits.

Prayer in W.P.No.26675 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the impugned freezing proceedings of the respondent in TIN:33980140833/2011-12 to 2014-2015 dated 14.06.2023 quash the same.

For Petitioner (in all W.Ps)	:	Mr.T.C.Sajith Babu
For Respondent (in all W.Ps)	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate

COMMON ORDER

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondents.

2. The petitioner has challenged the respective Assessment orders dated 30.03.2021 and 31.03.2021 for the Assessment Years 2011-2012 to 2014-2015. It appears that the petitioner had earlier filed a writ petition for few other Assessment years in so far as burning loss is concerned. This Court passed a common order in a batch of Writ petitions in W.P.Nos.13901 of 2013 etc batch in the case of ***M/s.Interfit Techno Products Ltd and others*** Vs. ***The Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk and others*** vide order dated 26.11.2014. The said decision was followed by this Court in W.P.Nos.6904 and 6906 of 2021 in the case of ***M/s.Ponneri Steel Industries*** Vs. ***The Assistant Commissioner (ST)*** in its order dated 17.03.2021. This view has been recently affirmed by the Division Bench of this Court in ***Eastman Exports Global Clothing (P) Ltd*** Vs. ***The Assistant Commissioner (CT), Tirupur (North) Circle, Tirupur and others*** vide its order dated 28.02.2023 in W.A.No.1094 of 2015 et., batch.

3.*Prima facie,* it appears that part of the demand covered by respective impugned Assessment orders are covered by the above mentioned orders of this Court which are prior to passing of the impugned orders.

4.These writ petitions are opposed by the learned Government Advocate for the respondent in the light of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440.

5.This Court had given an liberty to the petitioner in its order dated 19.01.2023 in W.P.No.1175 of 2023 to challenge a similar Assessment orders in the manner known to law. An attempt of the petitioner to file an Appeal before the Appellate Commissioner at this stage belatedly would be time barred. Apart from the issue being partly covered by the two decision regarding burning loss, there are also several disputed question of fact that are involved. Therefore, merely because an issue is covered in favour of the petitioner would not entitle the petitioner to redress its grievance against the order belatedly before this Court by filing this writ petition.

6.Considering the above and balance the interest of the petitioner and the Revenue, Court is inclined to give liberty to the petitioner to file Statutory Appeal before the Appellate Authority, under the provisions of the TNVAT Act, 2006, against the respective impugned order subject to the petitioner pre-depositing amounts as is required to be pre-deposited under the provisions of the TNVAT Act, 2006 within a period of 30 days from the date of receipt of a copy of this order.

7. In so far as the amount towards burning loss is concerned, the petitioner need not make any pre-deposit any amount, as the issue is covered by the decision of this Court referred to supra and another decision of the Division Bench of this Court in ***Eastman Exports Global Clothing (P) Ltd*** Vs. ***The Assistant Commissioner (CT), Tirupur (North) Circle, Tirupur and others*** in W.A.Nos.1094 of 2015 etc batch.

8. These writ petitions stand disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

9. All recovery proceedings shall be kept in abeyance, pending disposal of the Appeal subject to the petitioner complying with the order.

13.09.2023

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

1. Union of India,
   Rep by its Secretary,
   Department of Revenue,
   Ministry of Finance,
   North Block, New Delhi – 110 107.

2. The Principal Chief Commissioner of Customs,
   Chennai Customs Zone, Custom House,
   No.60, Rajaji Salai,
   Chennai – 600 001.

3. The Deputy Commissioner of Customs (Refunds),
   Sea Customs Zone,
   Custom House,
   No.60, Rajaji Salai,
   Chennai – 600 001.

C.SARAVANAN, J.

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