IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.5788 & 20278 of 2024
and
W.M.P.Nos.6418, 6420, 22196 & 22197 of 2024

Exide Industries Limited,
Represented by its Zonal Accounts Head-South-Corporate
Mr.Nagarajan,
103-A, 4th Floor, Navins Presidium, A Block,
Nelson Manickam Road, Aminjikarai,
Chennai, Tamil Nadu 600 029.

...Petitioner in both W.Ps'

Vs.

1. Deputy Commissioner (ST)-I,
Large Taxpayers Unit,
South Tower, Nandanam,
Chennai.
TamilNadu-600 035.

2. Deputy Commissioner, (ST)-II,
Large Taxpayers Unit,
South Tower, Nandanam,
Chennai, Tamil Nadu-600 035.

... Respondents in both W.Ps'

Prayer in W.P.5788/2024: This Writ Petition filed under Article 226 of the

Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to impugned order issued in Form GST DRC 07 bearing Reference Number ZD3312230574281 dated 09.12.2023 passed by the 1st respondent and quash the same as arbitrary, unconstitutional, unreasonable and illegal.

Prayer in W.P.20278/2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the Respondent relating to impugned Order issued in Form GST DRC 07 bearing Reference Number ZD330424214415T dated 26.04.2024 and quash the same as illegal, unjustifiable and unconstitutional.

(In both W.P.s')

For Petitioner : M/s.Vinay Kumar Sharff

For Respondents : Ms.Amirta Poonkodi Dinakaran, Government Advocate (Taxes)

COMMON ORDER

Since the issue involved and the relief sought in both the Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. Challenging the impugned orders dated 09.12.2023 and 26.04.2024 passed by the first respondent for the financial years 2017-2018 and 2018-2019, the petitioner has filed the present Writ Petitions.

3. The learned counsel for the petitioner would submit that the

petitioner-company is engaged in the business of manufacturing Electric Storage Batteries and parts thereof. During/after the process of manufacturing the battery, the product undergoes multi quality checks at multiple stages of its manufacturing in order to ensure the proper functioning of the product. In case any defect is identified during the test checking, the product is considered as scrap. Thereafter, the said scrap batteries are sold to smelter for extraction of lead from the scrap battery. The said lead is purchased from the smelter and again used as input for manufacturing of batteries and included in the cost of material and does not become part of revenue as per financial statement. Further, for the income from sale of scrap batteries, the requisite tax has been paid. However, the second respondent issued show cause notices stating that the turn over shown in the profit and loss account was less than the turnover reported in GSTR-3B and, therefore, there is a mismatch of the figures set-out in the profit and loss account and GSTR-3B. In the reply to the show cause notices, the petitioner categorically stated that the sale of the scrap was shown under the cost of materials of goods and income from the sale of the batteries alone is shown under the category of turnover. However, the first respondent has not considered these aspects while passing the impugned assessment orders, inspite of providing the entire details.

4. On the other hand, Ms.Amirta Poonkodi Dinakaran, learned Government Advocate (Taxes) appearing for the respondent, would contend that the respondent's concern is with regard to the mismatch of tax liability between GSTR-3B and remittance of the entire tax amount. She further submitted that the petitioner has paid the tax for the scrap as well as for the sale of the batteries, but whether the entire amount of tax has been deposited or not is the issue in these Writ Petitions.

5. In reply to the aforesaid submission made by the learned Government Advocate for the respondent, today, the learned counsel for the petitioner produced the documents with regard to the GST return filed in GSTR-3B by giving the split-up of the amount paid towards tax for the sale of the scrap and the tax paid on the amount realized from the sale of the batteries.

6. The learned Government Advocate for the respondent would submit that these aspects have not been considered while passing the assessment orders. Therefore, she submitted that the matter may be remanded to the Authority concerned for re-consideration and the petitioner may be directed to furnish the relevant documents.

7. Heard the learned counsel for the petitioner as well as the learned Government Advocate for respondents.

8. The break-up of the amount paid towards tax for the sale of scrap and tax paid on the amount realized from the sale of the batteries has been placed for the first time before this Court and the same was not been considered by the first respondent before passing the assessment orders. The said fact is not disputed by the learned Government Advocate for the respondents. This Court is, therefore, of the view that an opportunity should be afforded to the petitioner to put-forth its case based on the materials now produced.

9. In the light of the above, this Court issues the following directions:-

(i) The impugned orders are set-aside and the matter is remanded to the first respondent for fresh consideration.

(ii) The petitioner is directed to file any additional reply/objections along with required documents and break-up figures as produced before this Court to the first respondent, within a period of two weeks from the date of receipt of a copy of this order.

(iii) On receipt of such additional reply/objections along with required documents from the petitioner, the respondent shall consider the same and issue a 14 days clear notice to the petitioner by fixing the date for personal hearing and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

10. With the above directions, these Writ Petitions are disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

29.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
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Krishnan Ramasamy,J.,
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<u>**W.P.Nos.5788 & 20278 of 2024**</u>

29.08.2024