IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.9656, 9657, 9661 and 9663 of 2021
and
W.M.P.Nos.10225, 10226, 10231 and 10232 of 2021

M.K.Aromatics (MK Aromatics Limited),
Represented by its Authorised Signatory,
Mr.S.Panneer Prakash
43-47, SIDCO Industrial Estate,
Alathur,
Chennai – 603 110. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
42, Wahab Nagar,
Thirukazhukundram. ... Respondent in all W.Ps

Prayer in W.P.No.9656 of 2021: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein to TIN:33451604709/2009-10 dated 22.03.2021, quashing the same.

Prayer in W.P.No.9657 of 2021: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein to TIN:33451604709/2010-11 dated 22.03.2021, quashing the same.

Prayer in W.P.No.9661 of 2021: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein to TIN:33451604709/2011-12 dated 22.03.2021, quashing the same.

Prayer in W.P.No.9663 of 2021: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein to TIN:33451604709/2012-13 dated 22.03.2021, quashing the same.

For Petitioner (in all W.Ps) : Mr.K.A.Parthasarathy

For Respondent (in all W.Ps) : Mr.V.Prashanth Kiran, Government Advocate

**COMMON ORDER**

By this common order, all these writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged the

impugned re-assessment orders all dated 22.03.2021.

3. In these writ petitions, the petitioner has assailed the impugned orders primarily on the ground that the question of petitioner obtaining industrial use certificate as is contemplated in Rule 6(3)(b) of TNVAT Rules, 2007 cannot be fastened on the petitioner as long as the petitioner has effected sale of industrial products to industrial consumers.

4. In these cases, it is the specific case of the petitioner is that the petitioner has sold fuel oil and permissible oil to various industrial consumers.

5. The learned counsel for the petitioner submits that the issue is now squarely covered by the decision of this Court rendered in the petitioner's own case for the Assessment Year 2008-2009 in W.P.No.16573 of 2006 dated 05.01.2021. As far as the denial of input tax credit availed on Air Conditioners, Fire Safety Equipments, Two Wheeler parts and Batteries are concerned, it is submitted that the petitioner's contention has not been considered and therefore there is a manifest violation of principles of natural justice. It is submitted that the

impugned order has placed reliance on the audit objections and no other material to confirm the demand. It is therefore submitted that the impugned order may be quashed to that extent. Similarly, imposition of penalty under the amended Section 27(4) of the Act also cannot be countenanced for the period in dispute as amendment to Section 27(4) came into force with effect from 29.01.2016 by Section 11 of the 2nd amendment Act.

6. Opposing the prayer, the learned Government Advocate for the respondent would submit that there is no merits in these writ petitions. All the issues relating to denial of input tax credit under Section 19(7) of the TNVAT Act, 2006.

7. Specifically, the learned Government Advocate for the respondent would submit that the petitioner is not entitled to input tax credit on Air Conditioners in view of the restrictions in Section 19(7)(c) of the Act. As far as Fire Safety Equipments are concerned, it is the case of the respondent that the order has correctly considered the reply of the petitioner and thus these writ petitions are liable to be dismissed. As far as the imposition of penalty is concerned, it is submitted that the penalty

is being imposed after the provisions has been amended and therefore on this count also there is no case made out for any interference. It is therefore submitted that there is no violation of principles of natural justice.

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

9. As far as first issue regarding failure to furnish industrial use certificate as is contemplated in Rule 6(3)(b) of TNVAT Rules, 2007 is concerned, the issue is squarely covered by an order of this Court by the petitioner's own case in W.P.No.16753 of 2016 vide its order dated 05.01.2021. There are no indications that the order has been deferred or has been stayed or set aside by the Hon'ble Division Bench of this Court. Therefore, to that extent, the petitioner thus challenge to the impugned order has to succeed. As far as the denial of input tax credit of Air Conditioners, Fire Safety Equipments, Two Wheeler parts and Batteries are concerned, they touch on the merits. Therefore, Court is not inclined to give a finding on the correctness or otherwise the order of the

respondent/Assessing Officer.

10. Therefore, to balance the interest of the parties, Court is inclined to partly allow these writ petitions as far as the first issue. As far as the demands covered by Rule 6(3)(b) of the TNVAT Rules, 2007, the cases are remitted back to the respondent, subject to the petitioner depositing 25% of the input tax credit availed which has sought to be denied under Section 19(7) of the TNVAT Act, 2006. It is made clear that the petitioner shall deposit the amount in cash within a period of 30 days from the date of receipt of a copy of this order. The petitioner is entitled to file additional reply on the surviving issues both on the denial of input tax credit and imposition of penalty under Section 27(4) of the Act. The respondent shall thereafter pass appropriate orders on merits. Needless to state, the petitioner shall be heard before final orders are passed.

11. These Writ Petitions stand partly allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

**05.11.2024**

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

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
42, Wahab Nagar,
Thirukazhukundram.

**C.SARAVANAN, J.**

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