IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2024

C O R A M

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Writ Petition Nos.W.P Nos.13471,13473,13475 & 13477 of 2022
&
WMP Nos.12652,12655,12654 & 12659 of 2022

Tvl.GKN Driveline India Limited,
Represented by Authorised Signatory,
Mr.Arun Kumar Nayak,
Plot No.B-13, SIPCOT Industrial Park,
Vaipur A&B Village, Oragadam,
Sriperumbudur Taluk,
Kancheepuram District-602 105. ... Petitioner

vs.

1. The State Tax Officer,
Thirumazhisai Assessment Circle,
Integrated Commercial Taxes Building,
No.109, Bangalore High Road,
Varadharajapuram, Nasarathpet,
Chennai-600 123.

2. The Assistant Commissioner (T),
Oragadam Assessment Circle,
No.3/177, 2nd Floor, Bazar Street,
Hajiyar Nagar, Padappai-601 301.

3. The Commissioner of Commercial Taxes,
Ezhilagam, Chennai-600 005. ... Respondents

PRAYER in WP.No.13471 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records relating to Impugned Order No.TIN/33171663839/2011-12 dated 18.04.2022 passed by the 1st Respondent and quash the same.

PRAYER in WP.No.13473 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records relating to Impugned Order No.TIN/33171663839/2013-14 dated 18.04.2022 passed by the 1st Respondent and quash the same.

PRAYER in WP.No.13475 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records relating to Impugned Order No.TIN/33171663839/2012-13 dated 18.04.2022 passed by the 1st Respondent and quash the same.

PRAYER in WP.No.13477 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records relating to Impugned Order No.TIN/33171663839/2015-16 dated 18.04.2022 passed by the 1st Respondent and quash the same.

In all Writ Petitions

For Petitioner : Ms.R.Charulatha for
M/s.Lakshmi Kumaran and Sridharan
Attorneys

For Respondents : Mr.C.Harsha Raj,
Addl. Government Pleader (Tax)

COMMON ORDER

In each writ petition, the petitioner assails an assessment order issued in respect of a specific assessment year pursuant to notices issued under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT Act).

2. The petitioner is a registered dealer under the TNVAT Act and had filed VAT returns in respect of the relevant assessment periods. Pursuant to an audit by the Enforcement Officials, a show cause notice was issued to the petitioner in November, 2016. In such show cause notice, four defects relating to Input Tax Credit (ITC) claims were pointed out, and the petitioner was called upon to show cause as to why ITC should not be reversed. The admitted position is that defects Nos.1 to 3 were responded to and stand resolved. In effect, these writ petitions are concerned with defect No.4, which relates to the reversal of ITC on purchase bills not accounted for by

the supplier concerned. The following demands were made in the said notice in respect of each of the relevant assessment years:

S.No.	W.P.Nos.	Assessment Years	ITC reversal demand due to alleged invoice mismatch
1.	13471 of 2022	2011-12	Rs.5,44,252/-
2.	13475 of 2022	2012-13	Rs.9,63,351/-
3.	13473 of 2022	2013-14	Rs.11,49,504/-
4.	13477 of 2022	2015-16	Rs.3,66,546/-

3. The aforesaid notice was replied to by the petitioner in February, 2017 by enclosing sample copies of invoices along with corresponding ledger accounts, declaration certificates received from certain sellers and copies of their returns. The receipt of these documents was duly acknowledged by the respondents. Later, in March, 2018, the petitioner submitted additional documents, i.e., invoice copies of the supplier. Thereafter, in September, 2018, the petitioner submitted bank statements and supplier-wise abstract. Upon receipt of the petitioner's reply, further show cause notices were issued in October, 2018, April, 2021 and February, 2022. The notice in February, 2022 was replied to in March, 2022 by enclosing relevant invoices, declaration letters from the suppliers, bank

statement of accounts and bank statement of GKN. The orders impugned in these writ petitions came to be issued in the above facts and circumstances.

4. Learned counsel for the petitioner referred to the impugned order and pointed out that the impugned orders refer to the documents submitted by the petitioner, but the said documents were not taken into account while rejecting the ITC claim of the petitioner. Learned counsel also pointed out the finding recorded in the impugned order to the effect that the genuineness of the transactions of purchases could not be verified due to non-submission of documents by the dealer. In the face of the submission of documents at various points of time by the petitioner, it is submitted that these findings are unsustainable.

5. In response to these submissions, Mr.C.Harsha Raj, learned Additional Government Pleader, submits that a person availing ITC is under an obligation to establish the genuineness of the transaction by submitting all relevant documents for such

purpose. By referring to Rule 10(2) of the TNVAT Rules, 2007 read with Section 19(13) of the TNVAT Act, he submits that a registered dealer is under an obligation to produce the original tax invoice in support of the ITC claim. By inviting my attention to the impugned order at page 224 of the typed set, learned counsel points out that original tax invoices were not produced by the petitioner. He also points out that the impugned order records that purchase ledger accounts were not submitted by the dealer. By referring to the reply issued by the petitioner in January, 2017 to the first show cause notice, he points out that the petitioner provided sample copies of invoices and declaration certificates from certain sellers. On the basis of sample invoices and declaration certificates from certain sellers, learned counsel contends that ITC claims cannot be sustained. For all these reasons, learned counsel submits that no interference is warranted with the impugned assessment orders and that the petitioner should have, in any event, availed of the statutory remedy and not approached this Court under Article 226 of the Constitution of India.

6. The orders impugned in these writ petitions are on substantially the same lines. In each order, reference is made to documents submitted by the petitioner. These documents include relevant invoices, declaration letters from suppliers, buyers' statement of accounts, bank statement of GKN indicating payments made to the suppliers and Annexure - II of the buyer reflecting the turnover and tax paid. After noticing these documents, the assessing officer did not examine these documents, assess the materiality and weight thereof and set out why these documents do not establish the genuineness of purchases allegedly made by the petitioner.

7. Instead, the following findings were recorded in the impugned order:

> *"As an assessing Officer, the transaction has to be verified as per the above circular instructions. In view of the above circular instructions, the verification and genuineness of transaction of purchases could not be made only for non-submission of the related documents by the dealer.*

As an assessing Officer, the transactions has to be verified based on the Original Invoices. In the absence of the Original Tax Invoices as required under Rule 10(2) and 10(2-A) of the TNVAT Rules, 2007 the verification and genuineness of transaction of purchases could not be made only for non-submission of the Original Tax Invoices by the dealer.

The dealer as not furnished the copy of the Ledger Account of Purchases. In the absence of the Purchase Ledger Account, the verification and genuineness of transaction of purchases with reference to payments made through Bank could not be made only for non-submission of the Purchase Ledger Account maintained by the dealer."

8. The first finding mentioned above is vague and does not refer to specific documents. As regards the second finding, Rule 10(2) of the TNVAT Rules mandates production of the original tax invoices. On this issue, however, learned counsel for the petitioner asserts that the petitioner has all the original tax invoices in its custody and would produce the same for inspection by the Assessing

Officer. The third finding relates to alleged non-submission of the purchase ledger account. Regarding this submission, learned counsel for the petitioner pointed out that the relevant ledger accounts were provided.

9. From the above discussion, the conclusion that follows is that the Assessing Officer did not duly consider documents such as invoices, declaration letters and bank statements, which were provided by the petitioner, and thereafter indicate as to why those documents do not adequately satisfy the requirement of establishing the genuineness of purchase in respect of the ITC claim. For such reason, I am inclined to interfere with the orders impugned and the said orders are quashed. As a corollary, these writ petitions are disposed of by remanding these matters for re-consideration by the Assessing Officer. The petitioner is granted leave to produce all supporting documents, including the original tax invoices, to support its ITC claim provided such documents are submitted within two weeks from the date of receipt of a copy of this order. Upon receipt of such documents and after providing a reasonable opportunity to the

petitioner, the assessing officer shall complete fresh assessments within a period of four weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.01.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

1. The Sales Tax Officer,
   Thirumazhisai Assessment Circle,
   Integrated Commercial Taxes Building,
   No.109, Bangalore High Road,
   Varadharajapuram, Nasarathpet,
   Chennai-600 123.

2. The Assistant Commissioner,
   Oragadam Assessment Circle,
   No.3/177, 2nd Floor, Bazar Street,
   Hajiyar Nagar, Padappai-601 301.

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