IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.27455 and 27456 of 2021

Tvl.D.P.Sons & Technologies,
No.1/403-A1, MGR Nagar,
Mookandapalli,
Hosur – 635 109.
Represented by its Partner. ... Petitioner in both W.Ps.

Vs.

1.The Deputy State Tax Officer,
Hosur (South) – III Assessment Circle,
Hosur.

2.The Appellate Deputy Commissioner (CT)(FAC),
Salem – 636 007. ... Respondents in W.P.No.27455 of 2021

3.The Appellate Deputy Commissioner (CT)(FAC),
Salem – 636 007.

4.The Deputy State Tax Officer,
Hosur (South) – III Assessment Circle,
Hosur. ... Respondents in W.P.No.27456 of 2021

Prayer in W.P.No.27455 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned assessment order bearing Reference No.1281049/2015-16 dated 18.10.2021 passed by the 1st respondent and quash the same.

Prayer in W.P.No.27456 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned appellate order in A.P.No.CST/12/2019 dated 18.03.2020 passed by the 1st respondent and quash the same.

For Petitioner (in both W.Ps)	: Mr.Adithya Reddy
For Respondents (in both W.Ps)	: Mr.Richardson Wilson Additional Government Pleader

COMMON ORDER

The petitioner is before this Court against the impugned order passed by the Appellate Authority namely the Appellate Deputy Commissioner (CT) (FAC), the first respondent in W.P.No.27456 of

2021 and the consequential order passed by the second respondent in W.P.No.27455 of 2021 on 18.10.2021 for the Assessment year 2015-2016. The petitioner had earlier suffered an adverse order in the hands of the second respondent on 10.10.2019, whereby, the petitioner was denied a part of the input tax credit under Section 19(5)(a) of the TNVAT Act, 2006 to an extent of Rs.53,840/-.

2. Aggrieved by the same, the petitioner had preferred an appeal before the first respondent/The Appellate Deputy Commissioner (CT) (FAC) in A.P.No.CST/12/2019 which has culminated in the impugned order dated 18.03.2020, impugned in W.P.No.27456 of 2021. By the impugned order, the first respondent has accepted the plea of the petitioner as far as Section 19(5)(a) of the TNVAT Act, 2006. However, at the same time has held that the petitioner was not eligible for exemption in terms of Section 18 of the TNVAT Act, 2006. Operative portion of the order reads as under:-

> "In view of the above facts and provisions of the law, I am of the view that the exemption claimed and allowed for the sales of tools made to 100% Export Oriented Units located in other States against green card is neither Zero rated sales nor exempted sales, but taxable

sales and the exemption allowed is also not in accordance with law. If the sales to 100% EOUs located in other States is assessed as taxable as provided under the law, then no reversal under Section 19(5)(a) of the TNVAT Act, 2006 shall warrant. Further, no order of reversal can be made under the CST Act, 1956 i.e. in the CST assessment order. In view of the above facts, I set aside the reversal made to an extent of Rs.53,840/- under Section 19(5)(a) of the TNVAT Act, 2006 in the CST assessment order passed in CST/1281049/2015-2016 dated 10.10.2019 and remit the issue back to the assessing officer to re-examine the issue of reversal and the exemption already granted and to pass appropriate order on merits and in accordance with law under the relevant Acts after affording an opportunity of hearing to the appellant. With the above directions the appeal stands **remanded."**

3. Pursuant to the aforesaid order, the second respondent/The Deputy State Tax Officer, Hosur (South) – III Assessment Circle, Hosur has passed an order dated 18.10.2021.

4. The learned counsel for the petitioner submits that the order passed by the first respondent/The Appellate Deputy Commissioner (CT) (FAC) on 18.03.2020 was in gross violation of principles of natural justice, as the petitioner was not put to notice. It is submitted that these impugned orders are devoid of merits and therefore liable to be quashed.

5. It is submitted that a consequential Assessment order dated 18.10.2021 passed by the second respondent/The Deputy State Tax Officer, Hosur (South) – III Assessment Circle, Hosur pursuant to the order is also liable to be quashed.

6. On the other hand, the learned Additional Government Pleader for the respondents submitted that the impugned orders are well reasoned and require no interference and therefore submits that these writ petitions are liable to be dismissed. It is submitted that liberty can be given to the petitioner to work out the remedy before the Appellate Authority against the respective orders.

7. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, it is noticed that the impugned orders passed by the Appellate Authority/first respondent on 18.03.2020 in A.P.No.CST/12/2019 was passed without proper notice to the petitioner. The observations made therein has resulted in the impugned order dated

18.10.2021 of the second respondent/The Deputy State Tax Officer, Hosur (South) – III Assessment Circle, Hosur.

8. Under these circumstances, the impugned orders are set aside and the cases are remitted back to the respondents to pass a fresh orders on merits and in accordance with law. The impugned order dated 18.03.2020 is quashed and the matter is remitted back to the 1st respondent to pass a fresh orders on merits and in accordance with law.

9. Consequently, the impugned order dated 18.10.2021 bearing reference No.1281049 impugned in W.P.No.27455 of 2021 also stands quashed. The impugned order of Deputy Commissioner (CT) (FAC)/first respondent dated 18.03.2020 shall be treated as addendum to the Show Cause Notice. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The respondents shall pass final orders on merits and in accordance with law as expeditiously as possible preferably within a period of three months thereafter.

10. These writ petitions are allowed. No costs.

12.08.2024

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

1.The Deputy State Tax Officer,
Hosur (South) – III Assessment Circle,
Hosur.

2.The Appellate Deputy Commissioner (CT)(FAC),
Salem – 636 007.

C.SARAVANAN, J.

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