IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.26955 of 2021
and
W.M.P.Nos.28386 & 28388 of 2021

M/s.Sri Manjulakshmi Spinners
Represented by its Partner
P.Chandrasekaran ... Petitioner

vs.

The Assistant Commissioner (ST)
Palladam 2 Assessment Circle,
Tiruppur. ... Respondent

Prayer : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the impugned proceedings of the respondent in TIN 33236242885/2014-2015 and quash the impugned order dated 17.11.2021 as passed contrary to the provisions of the TNVAT Act, 2006 and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.Richardson Wilson
Addl.Govt.Pleader.

ORDER

The petitioner has challenged the impugned Assessment Order dated 17.11.2021 for the Assessment year 2014-15.

2. The impugned demand precedes a notice dated 14.09.2021 wherein the petitioner was called upon to reverse input tax credit availed in terms of Section 19(2)(v) of the TNVAT Act, 2006 for a sum of Rs.4,99,014/-. The demand proposed has been confirmed vide impugned Assessment Order dated 17.11.2021 for the Assessment year 2014-15 to that extent.

3. A further sum of Rs.5,56,423/- as proposed in the notice dated 14.09.2021 on account of mis-match of the monthly return between the petitioner and the dealer from whom the petitioner had purchased goods under various invoices during the period in dispute as detailed in the

above said notice has also been confirmed vide impugned Assessment Order dated 17.11.2021 for the Assessment year 2014-15.

4. The petitioner has challenged the impugned order primarily on the ground that the Assessing Officer wrongly confirmed the demand as far as Section 19 (2)(v) of the TNVAT, Act, 2006 on the ground that the issue was pending before the Division Bench of this Court in W.A.No.1260 of 2017 in **the State of Tamil Nadu represented by its Secretary Commercial Taxes Department Fort St. George Chennai - 600 009 and another vs. M/s. Everest Industries Limited rep. by its Senior Manager-Finance Podanur Post Coimbatore 641 023.** However, the said appeal was allowed on 31.03.2022

5. As far as challenge to the demand on account of mismatch is concerned, it is submitted that the impugned demand which confirmed the proposed notice dated 14.09.2021 has failed to take note of the Circular issued by the Principal Secretary/Commissioner of Commercial Taxes in Circular No.5/2021 LQ10/12521/2016 dated 24.02.2021.

6. The learned counsel for the petitioner would also submit that as far as demand under Section 19(2) (v) of the TNVAT Act, 2006 is concerned, the Division Bench of this Court in **the State of Tamil Nadu Represented by the Joint Commissioner (CT) Coimbatore Division, Coimbatore vs. Tvl.Marks Engineering Works No.67/8, Athipalayam Road Chinnavedampatty, Coimbatore** in TCA.No.21 of 2024 dated 05.08.2024 has rejected the appeal filed by the Commercial Tax Department in the light of the decision of the Division Bench of this Court.

7. The learned counsel for the respondent on the other hand submits that the petitioner has an alternate remedy under Section 51 of the Tamil Nadu Value Added Tax and therefore this writ petition is liable to be dismissed.

8. As far as demand under Section 19(2)(v) of the TNVAT Act, 2006 is concerned, the issue is squarely covered in favour of the petitioner in terms of **the State of Tamil Nadu represented by its**

Secretary Commercial Taxes Department Fort St. George Chennai - 600 009 and another vs. M/s. Everest Industries Limited rep. by its Senior Manager-Finance Podanur Post Coimbatore 641 023 which decision also affirmed by the Divsion Bench of this Court in **the State of Tamil Nadu Represented by the Joint Commissioner (CT) Coimbatore Division, Coimbatore vs. Tvl.Marks Engineering Works No.67/8, Athipalayam Road Chinnavedampatty, Coimbatore** in its order dated 05.08.2024 in TCA.No.21 of 2024.

9. The Court had rejected the appeal filed by the Commercial Tax Department. Therefore, the respondent is directed to drop the demand as far as issue arising out of Section 19(2)(v) of the TNVAT Act, 2006 is concerned, without prejudice to its right to revive the issue in the light of final order to be passed by the Hon'ble Supreme Court in SLP(C)no.5815/2023.

10. The dropping of the demands as far as demand under Section 19(2)(v) of the TNVAT Act, 2006 will be without prejudice to the rights of the department to reissue a notice, if the appeal filed by the department

before the Hon'ble Supreme Court in SLP(C)No.5815/2023 is answered in favour of the Commercial Tax Department.

11. As far as the second issue arising out of mismatch is concerned, clearly the impugned order is unsustainable and the procedure prescribed in para 3.3 of the Circular No.5/2021 bearing Reference No.LQ10/12521/2016 dated 24.02.2021 of the Principal Secretary/Commissioner of Commercial Tax has not been followed.

12.. Para 3.3. of the Circular is reproduced below:-

3.3 Procedure to be followed in the cases of Mis-match:-

3.3.1 The assessing authority who has raised the dispute of mismatch (herein after called as Original Assessing Authority) shall list out all such pending mismatch cases in respect of his/her assessment circle and report to the DC/JC as well as in the next statistics to be furnished after this circular comes into effect, for which suitable table is being prescribed and thereafter the report the progress every month.

3.3.2 The Original Assessing Authority shall undertake verification mismatch transaction report in the department intranet website (tnvat.gov.in) with reference to the data available at both the ends i.e., buyer and seller. On verification of the data, if the Original Assessing Authority could reconcile the mismatch and finds that the mismatch is due to clerical or inadvertent error the Assessing Authority shall pass appropriate orders dropping further action.

3.3.3 If the Original Assessing Authority is unable to resolve either the whole or part of the mismatch, then the Original Assessing Authority shall issue notice to the dealer concerned indicating the discrepancy with an opportunity to show cause to reconcile the same. After the receipt of reply and after due enquiry, the Original Assessing Authority finds that the seller has effected the transaction shall make a request to Other End Assessing Authority through email (zimbra mail) marking copy to concerned DC and JC and seek for the requisite details of verification. If on enquiry Original Assessing Authority is of the view buyer has made bogus claim / wrong claim, by being involved in bill trading by producing bogus invoice, etc., the buyer shall be assessed to tax / reversal of ITC, as the case may be, then the Original Assessing Authority shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006.

3.3.4 The Other End Assessing Authority shall verify the details provided to him / her with reference to the manually filed original / revised returns or by issuing show cause notice and calling for the details from the dealer. After the receipt of reply and after due enquiry, the Other End Assessing Authority finds that the seller has reported the transaction and paid the tax due shall report the same to original Assessing authority and both of them shall drop further proceedings and on the other hand that if the whole or part of the transactions are not reported by the seller, then shall initiate assessment proceedings against the seller and shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006 The result of such action shall be reported to the Original Assessing Authority.

3.3.5 The Assessing Authority should issue show cause notice along with all the details connected to the assessment seeking objections On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing) The assessing officer shall grant adequate opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu the Assessing Authority can summon the other end dealer and on request, a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days.

3.3.6 The Territorial Deputy Commissioners shall oversee the work and ensure that the verification reports are promptly be sent and the cases are finalized without any undue delay.

13. In the light of above observation, the impugned order is liable to be quashed and the case should be remitted back to the respondent to pass a fresh order on merits in accordance with law as expeditiously as possible, preferably within a period of 90 days from date of receipt of this order.

14. This writ petition is allowed by way of remand. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2024

Index: Yes/ No
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<u>To</u>

The Assistant Commissioner (ST)
Palladam 2 Assessment Circle, Tiruppur.

C.SARAVANAN,J.

kkd

W.P.No.26955 of 2021

29.08.2024