BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.Nos.23369 of 2015 & 10163 to 10166 of 2018
and
W.M.P.(MD)Nos.1 and 2 of 2015 and 9214 to 9217 of 2018

W.P.(MD)No.23369 of 2015:-

DCW Ltd.,
Sahupuram - 628 229,
Tuticorin District,
Tamil Nadu,
Rep. by its General Manager. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Tiruchendur,
Tuticorin District.

2.City Union Bank Ltd.,
Rep. by its Branch Manager,
Tuticorin Branch,
103, A-5-6, V.E. Road,
Tuticorin – 628 002,
Tuticorin District. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the impugned notice issued by the first respondent in his Proceedings in ROC.A3/1989/13 dated 17.12.2015, by enclosing Form "U" Notice dated 17.12.2015 and quash the same.

For Petitioner : Mr.P.R.Raman
Senior Counsel
for Mr.C.Seethapathy

For R1 : Mr.R.Suresh Kumar
Additional Government Pleader

For R2 : No Appearance

COMMON ORDER

By this common order, all the five Writ Petitions are being disposed of.

2. In W.P.(MD)No.23369 of 2015, the petitioner has challenged the impugned notice dated 17.12.2015 of the first respondent in his Proceeding bearing reference ROC.A3/1989/13 dated 17.12.2015, enclosing Form "U" Notice dated 17.12.2015.

3. In W.P.(MD)Nos.10163 to 10166 of 2018, the petitioner has challenged the following Assessment Orders passed by the respondent for the following Assessment Years.

W.P.(MD)No.	Assessment Years	Assessment Order No. & Date
10163 / 2018	2010 - 2011	33465900009, dt. 28.03.2018
10164 / 2018	2011 - 2012	33465900009, dt. 28.03.2018
10165 / 2018	2012 -2013	33465900009, dt. 28.03.2018
10166 / 2018	2013 - 2014	33465900009, dt. 28.03.2018

4. The dispute in W.P.(MD)Nos.10163 to 10166 of 2018 arises on account of input tax credit availed by the petitioner under Section 19 of the TNVAT Act under the following heads:-

> *"1. Furnace Oil.*
> *2. Ineligible refusal for Capital Goods, Spares, equipments, etc.*
> *3. ITC reversal on purchase from Registration cancelled TIN of Vendors.*
> *4. Reversal of ITC for Consignment Sale.*
> *5. Non-production of original invoices by assessee.*
> *6. Sale of land and Wind Mill for the years 2010-11 and 2011-12 and non- payment of VAT, not collected from Purchaser.*
> *7. Sale of Power (exempted) and DEPB Licence Credit in the Books, not assessed for VAT, resulting in difference between Balance Sheet and the Return filed."*

5. The learned Senior Counsel for the petitioner submits that during the pendency of the present Writ Petitions, the petitioner has filed Section 84 Petition for rectification of the Impugned Orders dated 28.03.2018 on 07.01.2023 and they are said to be pending before the respondent.

6. The learned Senior Counsel for the petitioner also submits that the identical issues had come up for consideration before this Court for Assessment Years 2006-2007 to 2009-2010 in W.P.(MD)Nos.78 to 81 of

2014 and for the Assessment Year 2014-2015 in W.P.(MD)No.13437 of 2018. These Writ Petitions were favourably disposed of by way of remand vide order dated 09.01.2014 and 25.06.2018. It is submitted that pursuant to the above, orders have been passed on the following dates for the Assessment Years as detailed below:-

Assessment Year	Date
2006 - 2007	27.01.2020
2007 - 2008	27.01.2020
2008 – 2009	29.01.2020
2014 - 2015	28.01.2020

7. It is submitted that the petitioner has preferred further appeal before the Appellate Authority and that the denial of input tax credit vide the above mentioned orders were partly confirmed by the Appellate Authority and with respect to certain other issues, the cases were remanded back.

8. It is submitted that the petitioner had also filed further appeals before the Sales Tax Appellate Tribunal against the orders of the Appellate Authority insofar as the issues which have been answered against the petitioner. It is submitted that the Department has accepted the order of the Appellate Tribunal for the above mentioned Assessment

Years, while the issue on the remand portion is yet to be adjudicated. It is also submitted the the Tribunal's decision is also awaited for the above mentioned Assessment Years.

9. It is submitted that a substantial portion of the demand that has been confirmed vide impugned orders had been answered in favour of the petitioner by the Appellate Authority and only a portion of the order, which has been answered against the petitioner, the petitioner is in appeal before the Sales Tax Appellate Tribunal. As far as the order of the Appellate Commissioner remanding the issue on the reversal formula is concerned, it is yet to be adjudicated.

10. Having considered the arguments of the learned Senior Counsel for the petitioner and the learned Additional Government Pleader for the official respondent, this Court is inclined set aside the impugned orders in W.P.(MD)Nos.10163 to 10166 of 2018 and remit the cases back to the respondent to pass separate common orders for each of the Assessment Years along with the Applications filed by the petitioner on 07.01.2023 under Section 84 of the TNVAT Act, 2006. To the extent the orders of the Appellate Commissioner for the Assessment Years 2006-2007, 2007-2008, 2008-2009 and 2014-2015 have been accepted and the demand may be dropped and to the extent the demands have been confirmed by the respondent, the demand may be confirmed for the petitioner to pursue the remedy before the Appellate Authority.

11. The respondent shall follow the reasonings of the Commercial Tax Officer as also the Appellate Authority. On the issues which are still pending before the Appellate Tribunal, the respondent may pass favourable orders, only if the petitioner has any other decisions of the Court which are favourable to the petitioner. Otherwise the demand may be confirmed to that extent for the petitioner to work out the remedy before the Appellate Forum.

12. It is submitted that the tax liability of Rs.45,65,894/- has also been attached, which is the subject matter of W.P.(MD)No.23369 of 2015. The respondents are directed to appropriate the amount towards part of the tax liability of the petitioner and refund the balance if any, in case, the demand is dropped pursuant to the remand proceedings.

13. In the result, W.P.(MD)No.23369 of 2015 is disposed of. W.P.(MD)Nos.10163 to 10166 of 2018 stand allowed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No **30.07.2024**
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

To

The Commercial Tax Officer,
Tiruchendur,
Tuticorin District.

C.SARAVANAN, J.

smn2

Common order
W.P.(MD) No.Nos.23369 of 2015 & 10163 to 10166 of 2018

30.07.2024