IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.21 of 2015
and
M.P.No.1 of 2015

M/s.Swelect Energy Systems Limited,
No.5, P.S.Sivasamy Salai,
Mylapore,
Chennai-600 004. .. Appellant/ Petitioner

Vs.

The Assistant Commissioner (CT)
Mylapore Assessment Circle,
No.46, Greenways Road,
Chennai-600 028. .. Respondent/ Respondent

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 10.11.2014 made in W.P.No.28067 of 2014.

Petition presented under Article 226 of the Constitution of India to issue writ of certiorari to call for the records relating to impugned order in TIN No.33560700851/2012-13 dated 28.08.2014 passed by the respondent and to quash the same with the consequential relief.

For Appellant : Mr.T.Ramesh

For Respondent : Mrs.Anitha Sumanth Spl.G.P.(T)

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Assailing the validity of the impugned order dated 28.08.2014 passed by the respondent, the appellant / writ petitioner has come up with the writ petition.

2 The case of the writ petitioner is that the assessment order dated 28.08.2014 has not taken into consideration the tax

paid by the writ petitioner for the value of stock of goods of Rs.37,16,84,061/-, which was transferred to M/s.Novateur Electrical & Digital Systems Private Limited as is evident from the sworn statement before the Assistant Commissioner (CT), Central Enforcement Wing-II, Chennai-6. Thus the assessment order deserves to be set aside, remitting back the matter to the assessment officer for a fresh assessment on consideration of the relevant facts.

3 The learned Single Judge examined the case carefully and categorically held that the dealer did not produce the details called for and since no records were produced, it was stated that the petitioner has not transferred the entire assets and liabilities of the division and are continuing the manufacturing of UPS, the slump sale said to have been effected on 29.05.2012, is not in order and therefore, it is not eligible for exemption and proposed to be assessed the tax at 5%. It was further held that the writ petitioner was given sufficient opportunity to produce all documents and as such, the assessment order cannot be faulted with. It was further observed as under :

> "13.The petitioner would admit that the documents called for, more particularly, the Business Transfer Agreement dated 22.03.2012, was not produced. Since this document is a basic document to establish the case of the petitioner stating that it is a case of slump sale was not produced, the Assessing Officer cannot be faulted for proceeding with the assessment with the available material on his file."

4 The learned counsel appearing for the appellant / writ petitioner submits that if the petitioner is made to take recourse to appellate authority, the appellant / writ petitioner will have to deposit 25% of the tax amount confirmed and as such, a fresh opportunity be granted to the appellant / writ petitioner to place all materials before the assessment officer for consideration and passing a fresh order.

5 On the other hand, the learned counsel appearing for the respondent submitted that the appellant /writ petitioner had not produced relevant documents, and as such, the assessment order may not be held as bad or invalid. There is statutory appellate forum available and as such, the petitioner may take recourse to the appropriate appellate forum.

6 We have examined the submissions advanced by learned counsel appearing for parties carefully and also the pleadings and documents appended thereto.

7 It appears that there is some element involving transfer of goods. If it is admitted position that the petitioner had failed

to produce relevant documents, in particular basic documents, the petitioner cannot be permitted to argue that the petitioner was not afforded an opportunity of hearing. However, in the facts of the case, when the appellant /petitioner is willing to deposit 10% of the total tax amount, we are of the considered view that one more opportunity be given to the appellant to produce all relevant documents before the assessing authority for taking a fresh decision on merits and in accordance with law. We make it clear that we are not expressing any opinion on the merits of the case. Accordingly, the assessment order dated 28.8.2014 is set aside and the matter is remitted back to the assessing officer to consider it afresh, on production of relevant documents by the appellant / writ petitioner and to take a decision on its own merit and in accordance with law on condition of payment of 10% of the tax amount, as referred herein-above.

8 In view of the foregoings, the writ appeal stands allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

vvk

To

The Assistant Commissioner (CT)
Mylapore Assessment Circle,
No.46, Greenways Road,
Chennai-600 028.

1 cc to Mr.T.Ramesh, Advocate, sr. 32499
1 cc to Spl.G.P, (Taxes) Sr. 32591

W.A.No.21 of 2015

TEJ (CO)
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