IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13661 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s Esquire Multiplast Private Ltd.,
rep.by its Authorised Signatory - V.Janardhanan
No.20, 21, 22, Sipcot Industrial Growth Centre
Perundurai ... Petitioner

-vs-

The Assistant Commissioner (CT)
Perundurai, Erode District ... Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the impugned proceedings of the respondent in TIN No.33952924216/2013-14 dated 29.12.2014 and to quash the same as illegal and contrary to the provisions of the TNVAT Act, 2006.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.V.Haribabu
Additional Government Pleader(Taxes)

ORDER

This writ petition has been filed challenging the impugned order dated 29.12.2014 passed by the respondent in TIN No.33952924216 for the assessment year 2013-14, to quash the same as illegal and contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006.

2. Learned counsel for the petitioner submitted that the petitioner is engaged in the manufacture of plastic crates and in the process of their business, the petitioner also effects inter-State

sales of the same to other dealers situated outside the State on concessional levy against declarations in Form-C. In addition thereto, the petitioner also effects transactions both on stock transfer as well as consignment sales in other States, therefore, they are entitled to claim input tax credit on the taxes paid or payable at the time of their purchase. When the petitioner is an assessee on the file of the respondent in TIN No.33952924216 both under the Tamil Nadu Value Added Tax Act and the Central Sales Tax Act, during the assessment year 2013-14, the petitioner had duly reported their turnover in their monthly returns and the same came to be originally assessed under Section 22(2) on a total and taxable turnover of Rs.14,19,60,752/- and Rs.14,15,33,502/- on deemed assessment basis. Since the monthly returns were subsequently verified by the respondent, finding certain defects, issued a revision notice dated 5.11.2014 proposing to reverse the input tax credit under Section 19(4), 19(5)(a)(c) on the value of stock transferred to other States, on the value of exempted sales and for having inter-State sale without filing a valid declaration as well proposing to impose penalty at the rate of 50% under Section 27(4) of the Tamil Nadu Value Added Tax Act. After issuance of notice, the petitioner was unable to reply, since he was taking treatment for cancer. Adding further, the learned counsel, drawing the attention of this Court to the medical report of the petitioner, stated that the petitioner was diagnosed for follicular lymphoma stage IV disease and he was also taking chemotherapy with six cycles of RCHOP followed by Rituximab maintenance. As the petitioner was not able to move and he was busy in taking treatment for the aforesaid dreaded disease, he pleaded that he was unable to file a detailed reply, therefore, the petitioner may be given one more chance to explain his case, so that the respondent would be entitled to consider the merits of the case and pass appropriate orders.

3. Mr.V.Haribabu, learned Additional Government Pleader for the respondent, opposing the above prayer, submitted that when the petitioner was unable to appear before the respondent, he should have sent a letter mentioning his inability to file the detailed objections. Since no such effort was taken by the petitioner, no leniency can be shown to the petitioner.

4. This Court finds no justification in the above submission. The reason is that the petitioner has produced the medical report issued by the Amrita Institute of Medical Sciences and Research Centre, Kochi. A reading of the same shows that even before the issuance of notice, the petitioner was taking chemotherapy treatment. Hence, this Court, accepting the explanation offered by the petitioner, is inclined to grant one more opportunity to the petitioner to file his

detailed reply before the respondent along with the necessary declaration forms. Accordingly, by setting aside the impugned order, the petitioner is directed to file his detailed reply before the respondent along with the necessary declaration forms. On receipt of the same, the petitioner may be given an opportunity of personal hearing to explain his case and thereafter it is open to the respondent to pass appropriate orders on merits and in accordance with law. The writ petition stands allowed. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ss

To

The Assistant Commissioner (CT)
Perundurai,
Erode District.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.26598
+1cc to the Government Pleader, S.R.No.26974

W.P.No.13661 of 2015
and
M.P.Nos.1 & 2 of 2015

SVI(CO)
CA(25/06/2015)