IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13662 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 638 052
Erode District ... 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 records of the impugned proceedings of the respondent in TIN No.33952924216/2014-15 dated 29.12.2014, quash the same as arbitrary and illegal.

For Petitioner : Mr.S.Rajasekar

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

ORDER

This writ petition has been filed for issuance of a writ of certiorari, to call for the impugned proceedings of the respondent in TIN No.33952924216 for the assessment year 2014-15 and to quash the same as arbitrary and illegal.

2. Learned counsel for the petitioner submitted that the petitioner is engaged in the manufacture of plastic furniture, bucket and crates by using plastic granules and being an assessee on the

file of the respondent, has filed their monthly returns both under the Tamil Nadu Value Added Tax Act and the Central Sales Tax Act for the assessment year 2014-15. While so, as per the scheme of the Tamil Nadu Value Added Tax Act, self-assessment ought to be made on the basis of the monthly returns filed by an assessee under Section 22 (2). In case of non-filing of returns by any assessee, the statute provides for a best judgment assessment in terms of Section 22(4). That apart, the Act also provides for provisional assessment under Section 25 on best judgment basis in the case of non-submission of returns. The above provisions clearly show that the statute on the whole is a self contained code that provides for all eventualities. While so, when the respondent issued a notice in TIN No.33952924216/2014-15 dated 20.10.2014 stating that even though the petitioner has effected stock transfer and consignment sales, they have not given reversal of ITC in their returns under Section 19(4) of the Act and that since the petitioner has also effected sales under Section 8(2) of the CST Act without declaration, for which reverse ITC has to be given under Section 19(5)(c) of the Act, the respondent proposed to make assessment under Section 25(1) of the Act. It is at this point of time, learned counsel for the petitioner submitted that when the respondent has got an option of making regular assessment rather than making provisional assessment for a particular period, the respondent has failed to take note of the said fact and also the decision rendered by the Hon'ble Division Bench of this Court in State of Tamil Nadu v. Wander Limited, (1990) 79 STC 421(Mad). In support of his submissions, he has also relied upon one another order passed by this Court in W.P.Nos.10080 to 10088 & 10403 to 10411 of 2008 dated 12.6.2008 (M/s Aspiring Enterprises Pvt.Ltd., etc., etc., v. The Commercial Tax Officer, Chengalpattu Assessment Circle) to say that when the assessment year is over, the provisional assessment order passed by the respondent is liable to be set aside. It was also submitted that the petitioner is ready to appear before the respondent to assist the respondent to pass appropriate final orders.

3. Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent.

4. As the assessment year in question is already over, the provisional assessment order passed by the respondent, as held by this Court in the aforementioned order, is liable to be set aside. Since the learned counsel for the petitioner has made a statement that his client will appear before the respondent, the said statement is also recorded. In view of the above, the impugned order is set aside and the respondent is given liberty to pass final assessment order on merits and in accordance with law after giving an

opportunity of personal hearing to the petitioner. 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.26599
+1cc to the Special Government Pleader(Taxes), S.R.No.26974

W.P.No.13662 of 2015
and
M.P.Nos.1 & 2 of 2015

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