IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19378 of 2015
And
M.P.No.1 of 2015

M/s.S.P.Industry,
Represented by its Partner ...Petitioner

Vs.

The Assistant Commissioner (CT)
Selaiyur Assessment Circle,
No.3, Sri Ram Nagar Road,
Rajeswari Nagar Extension,
Selaiyur, Chennai - 600 073. ...Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN.33760942405/2013-2014 and quash the impugned order dated 27.04.2015 as passed contrary to the provisions of the TNVAT and against the principles of natural justice and further direct the respondent to grant an opportunity to the petitioner to file its objections and the documents relating to the labour charges and to pass a fresh assessment order in accordance with law.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr.ANR.Jaya Pratap
Government Advocate (T)

ORDER

By consent, the writ petition is taken up for final disposal.

2.This writ petition has been filed by M/s.S.P.Industry challenging the impugned proceedings of the Assistant Commissioner (CT), Selaiyur Assessment Circle, in TIN.33760942405/2013-2014 dated 27.04.2015, by which, the respondent confirmed the proposals for the year 2013-14 and also levied penalty under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

3.Assailing the impugned order, the learned counsel appearing for the petitioner would submit that the petitioner, a Manufacturer of cold forged and machined components, registered his name on the books of the respondent under the provisions of the Tamil Nadu Value Added

Tax Act, 2006 and Central Sales Tax Act, 1956. The prime nature of work being done by the petitioner is to do job work on the materials provided by various industries involved in the manufacturing of automobile components. When the petitioner is engaged in doing labour job upon the raw materials supplied by the customers through their delivery challans, they used to account for the input materials received from the customers as per the TNVAT Act. The petitioner used to carry out job work such as blanking, anneling and cold forging as per the approved drawing given by the customers on the raw materials supplied by them by using consumables like oil, spares etc. The petitioner used to raise bill for the labour charges done on the materials supplied by the customers. They are not taxable under the provisions of the Tamil Nadu Value Added Tax Act. Therefore, they have declared the same as exempted turnover.

4.He would further submit that in the meanwhile, during the assessment year 2013-14, the petitioner received labour charges of Rs.2,94,43,412/- for doing labour job for various industries situated in Tamil Nadu. The details of the labour charges declared by the petitioner are also borne out by the records maintained by the petitioner in delivery challans raised by the customers while supplying materials for job work. Whileso, the respondent issued a notice dated 23.03.2015 for the assessment year 2013-14 which was received by the petitioner only on 01.04.2015. In the said notice, the respondent has alleged that on verification of the Auditor balance sheet, the petitioner has declared labour charges of Rs.2,94,43,412/- as exemption, but the details were not mentioned in the statement. Accordingly, the respondent came forward to levy tax on the labour charges at 5% with penalty under Section 27 of the TNVAT Act. When the respondent in the said notice dated 23.03.2015 did not specify any time limit as to on what date the petitioner has to file their objections, the petitioner on receipt of the notice on 01.04.2015 appeared before the respondent on 09.04.2015 and filed a letter on 14.04.2015 requesting the respondent to grant suitable time to reply to the notice dated 23.03.2015. But, when the respondent received the letter dated 14.04.2015 from the petitioner, he did not give any acknowledgement for the receipt of the same, but all of a sudden he has passed the impugned order.

5.Learned counsel appearing for the petitioner drawing the attention of this Court to the first page of the impugned order has submitted that when the notice dated 23.03.2015 has not mentioned about the time given to the petitioner for filing the detailed reply, it is not appropriate on the part of the assessing officer to say that the petitioner has failed to file reply within 15 days particularly, when there is no such word “15 days” mentioned in the notice. Immediately on receipt of the notice dated 23.03.2015, the petitioner also appeared before the respondent along with letter dated 14.04.2015 requesting for grant of 15 days time for giving suitable reply. Since the respondent after receiving the letter though did not issue any acknowledgement/ proof, the petitioner was under the impression that some reasonable time has been granted and in the meanwhile, he has been collecting all the documents relating to labour charges in question. But, all of a sudden, the respondent has passed the impugned order.

6.This Court finds some substance in the submission made by the learned counsel appearing for the petitioner. The first notice dated 23.03.2015 does not speak about the time limit for filing objections/ reply to the respondent. Secondly, the letter dated 14.04.2015 requesting the respondent to grant 15 days time to file suitable reply to the notice dated 23.03.2015 received by the petitioner on 01.04.2015 also speaks volume of his case that he wanted to file detailed reply.

7.Even today, the learned counsel appearing for the petitioner fairly submitted that all the documents are ready. Therefore, if a final opportunity is granted, he would be in a position to visit the office of the respondent and place all the materials to which course the learned Government Advocate has no objection.

8.Therefore, this Court considering the fact that the notice dated 23.03.2015 issued to the petitioner has failed to mention the time limit, the respondent ought not to have proceeded to pass the impugned order, more particularly, when the petitioner has approached the respondent with his letter dated 14.04.2015 requesting only 15 days time to file suitable reply.

9.Be that as it may. Today, the learned counsel appearing for the petitioner has mentioned that he has got all the documents. Therefore, this Court finds no embargo or impediment for directing the respondent to receive all the documents within a period of ten days from the date of receipt of a copy of this order. On receipt of all the documents along with reply of the notice dated 23.03.2015, it is open to the respondent to pass appropriate order on merits and in accordance with law. With the above finding, the impugned order stands set aside.

10.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To
1.The Assistant Commissioner (CT)
Selaiyur Assessment Circle,
No.3, Sri Ram Nagar Road,
Rajeswari Nagar Extension,
Selaiyur, Chennai - 600 073.

1 cc to Spl. Government Pleader.Sr.No.32944
1 cc to Mr.P.Rajkumar, Advocate Sr.No.32725

W.P.No.19378 of 2015
And
M.P.No.1 of 2015

ggk(co)
pmk.16.9.2015