IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.24425 of 2015 and
M.P.Nos.1 and 2 of 2015

MI Steel Processing India Pvt. Ltd. Rep by Director Makoto Katsuno SF No. 16/6A & 6B Oragadam-Wallajabad High Road Varanavasi Village Wallajabad Kancheepuram District 631 064 ... Petitioner

Vs

1. The Assistant Commissioner (CT),
   Kancheepuram Assessment Circle,
   Kancheepuram- 631 502.

2. The Appellate Deputy Commissioner,
   Chennai (South),
   3rd floor, PAPJM Building Annexe,
   No.1, Greams Road, Chennai-6.

(R-2 is impleaded as per order dated 12.10.2015 by in M.P.No.3/15 in W.P.No.24425/15). ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus calling for the records relating to the Assessment Order TIN/33111644181/2013-14 dated 22.12.2014 passed by the 1st respondent culminating in Order in 'A' No.54/2015/VAT, dated 18.06.2015 passed by the 2nd respondent and quash the same as arbitrary and illegal and direct the 1st respondent to return the amount of Rs. 33,61,000/- and release the Bank Guarantee furnished for Rs.33, 61, 000/-.

(Prayer amended as per Order of this court dated 12.10.2015, in MP.NO.4 of 2015 in WP.No.24425 of 2015

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr. V.Haribabu, AGP

ORDER

Writ petition is filed for the issuance of a writ of certiorarified mandamus calling for the records relating to the Assessment Order TIN/33111644181/2013-14 dated 22.12.2014 passed by the 1st respondent culminating in Order in 'A' No.54/2015/VAT, dated 18.06.2015 passed by the 2nd respondent and quash the same as arbitrary and illegal and direct the 1st respondent to return the amount of Rs. 33,61,000/- and release the Bank Guarantee furnished for Rs.33, 61, 000/-.

2. The case of the petitioner company is that it is engaged in the business of trading of steel coils and manufacturing of automotive parts registered under the Tamil Nadu Value Added Tax, 2006 with TIN No.33111644181 and the Central Sales Tax Act, 1956 with registration number CST 1244789. During the year 2013-2014, the petitioner awarded two contracts to M/s.Fujita Corporation, for Rs.32.01 crores and Rs.1.60 crores respectively. After the receipt of the contract, Fujita Corporation obtained two certificates in Form S for non-deduction of TDS. While so, the respondent issued notice dated 15.12.2014, served on the petitioner on 16.12.2014 stating that the Form S issued to Fujita Corporation is invalid since the address of the petitioner mentioned in Form S was not registered under the TN VAT Act, 2006 and directed the petitioner to pay the the TDS amount not deducted along with interest. Further an assessment order dated 22.12.2014 was passed. Challenging the same, the petitioner preferred an appeal and the same was dismissed by order dated 18.06.2015. Hence, the petitioner is before this Court with the prayer as mentioned above.

3. Heard both sides and also perused the records carefully.

4. According to the learned counsel for the petitioner, the said assessment order was questioned before the Appellate Authority/second respondent and the petitioner paid an amount of Rs.16,80,500/- and also furnished bank guarantee for Rs.33,61,00/-. Further, according to him, after having heard the appeal, the Appellate Authority/second respondent rejected the contentions of the petitioner and dismissed the appeal as not entertainable holding that the dispute cannot be the subject matter of the appeal under Section 51 of the Act.

5. Instead of returning the papers to the petitioner, the Appellate Authority decided the issue relating to the provisions which is to be filed before the revisional authorities and dismissed the appeal as not maintainable under Section 51 of TNVAT Act 2006.

6. In similar circumstances in W.P.No.27139 of 2015 by order dated 01.09.2015 this Court has passed the following order:

" In the result, the writ petition is allowed. The impugned order of the 2nd respondent dismissing the appeal as against levy of tax on TDS and the consequential levy of penalty under Section 27(3) of the TNVAT Act, for want of jurisdiction, is set aside and the 2nd respondent is directed to return all papers to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of such papers, the same shall be presented by the petitioner before the revisional authority complying with all the formalities within a period of two weeks thereafter. On such presentation, the authority concerned shall entertain the same without any reference to the period of limitation and dispose of the same within a period of six weeks from the date of taking the revision on file on merits and in accordance with law. No costs. Consequently, connected MPs are closed."

7. Since the circumstances are identical, following the same this writ petition is also allowed and the second respondent is directed to return the paper to the petitioner within two weeks from the date of receipt of a copy of this order and thereafter, immediately within two weeks, the petitioner is permitted to file a revision. On such filing of revision, the same shall be entertained by the authority concerned without raising any issues with regard to limitation and appropriate orders be passed within a period of four weeks from the date of taking the revision on file on merits and in accordance with law. It is open to the petitioner to file appropriate stay petition before the revisional authorities, who shall pass orders keeping in mind the payment of Rs.16,80,500/- already made by the petitioner. The bank guarantee executed by the petitioner which is going to expire on 23rd October 2015 shall be returned to the petitioner by the 1st respondent and its resubmission be decided by the revisional authority while considering the stay petition. Consequently, connected miscellaneous petitions are closed. No costs.
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Sd/-
Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

1. The Assistant Commissioner (CT),
Kancheepuram Assessment Circle,
Kancheepuram- 631 502.

2. The Appellate Deputy Commissioner,(CT),
Chennai (South),
3rd floor, PAPJM Building Annexe,
No.1, Greams Road, Chennai - 6.

+1 C.C. to The Special Government Pleader (Taxes), in Sr.No.56007

W.P.Nos.24425 of 2015

SD : 15/10/2015