IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.3.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.6933 and 6934 of 2015
and
MP.Nos.01 and 02 of 2015 (3 petitions)

M/s. Bhajrang Engineering Works
Rep.by its Proprietor
Plot No.30, 3rd Main Road
Krishnapuram,
Chennai - 602 024. ...Petitioner in WP.No.6933/15

M/s OM Enterprises
Represented by its Partner
Plot No.30, 3rd Main Road
Krishnapuram,
Chennai - 602 024. ...Petitioner in WP.No.6934/15

.Vs.

The Assistant Commissioner (CT)
Avadi Assessment Circle
No.9, 2nd Street, Kasturibai Nagar, Avadi
Chennai -600 054. ...Respondent in both WPs

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the impugned proceedings of the respondent in TIN: 33831302442/2013-2014; TIN:33741302443/2013-2014 and quash the impugned order dated 9.1.2015 and 17.12.2014 as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006 and also in violation of principles of natural justice.

For Petitioners : Mr.P.Rajkumar

For Respondent : Mrs. Cibivishnu
Additional Government Pleader

COMMONORDER

The petitioners have filed the above writ petitions to quash the impugned proceedings dated 09.01.2015 and 17.12.2014 respectively passed by the respondent.

2. The petitioners have effected sales of declared goods, such as TMT bars, M.S.Pipes, Sheets and Plates purchased from local suppliers and collected tax at the rate of 5%. According to the petitioners, in the monthly returns, instead of mentioning the commodity code 2041 relating to declared goods, they had wrongly mentioned the commodity code 2067 relating to industrial input. Though the declared goods and another goods are taxable at 5%, according to the petitioners, the respondent, for the assessment years 2013 -2014, issued pre assessment notices dated 15.12.2014 and 03.12.2014 respectively proposing to levy higher rate at 14.5% on the taxable turnover of Rs.13,20,168/- and 83,19,318/- respectively. Though the petitioners had effected sale of industrial input, they did not furnish industrial input certificate. On receipt of the notices dated 15.12.2014 and 03.12.2014, the petitioners' representative appeared before the respondent and explained to them that they have wrongly mentioned the commodity code 2067 relating to industrial inputs in their annexures instead of code 2041 which relates to declared goods and in any event, both the industrial inputs and declared goods are taxable at the rate of 5% and so even in the absence of industrial input certificate, still the declared goods sold by the petitioners could be taxed only at the rate of 5% and not at the rate of 14.5%. Inspite of the submission made, the respondent has chosen to pass the impugned orders dated 09.1.2015 and 17.12.2014 levying tax at the rate of 14.5% on the entire taxable turnover. That apart, in the impugned orders, the respondent has proposed to levy penalty under Section 22(5) of the TNVAT Act, that too, even without mentioning the same in the notices dated 15.12.2014 and 03.12.2014. Hence, the impugned orders are in violation of the principles of natural justice.

3. The learned Additional Government Pleader appearing for the respondent drew the attention of this Court to the order passed by the authority and submitted that in spite of notices and opportunity given to the petitioners, they did not avail the same and after getting an adverse order, the petitioners are refusing to comply with the same and have approached this Court. According to the respondent, the impugned orders are correct and as such, no interference is warranted.

4. I have heard the submission made by the learned counsel for the petitioners and the learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

5. It is the contention of the petitioners that only 7 days notice has been given to them for taking further action. According to the petitioners, the respondent has given 15 days notice in other cases. But, it is the contention of the respondent that a statute does not prescribe 15 days notice should be given to the petitioners. However, it is seen that after receipt of the pre assessment notices, there is no evidence on the part of the petitioners that they have made any representation before the authority concerned. Mere statement on the affidavit that they appeared before the authority cannot be accepted when the respondent denied the said averment.

6. The issue as to whether the tax should be levied at 5% or 14.5% has to be decided by the authority concerned.

7. In such circumstances, I am inclined to set aside the impugned orders only on the ground that the petitioners were not given an opportunity of personal hearing. Accordingly, the impugned orders are set aside and the matter is remitted to the authority for fresh consideration.

8. The learned counsel for the petitioners fairly submitted that the petitioners are willing to pay 10% of the tax amount without prejudice to their right if four weeks time is granted to pay the same.

9. The petitioners are directed to appear before the authority on 20.4.2015 along with objections and documents, if any. On that date, the authority is directed to hear the petitioner and pass fresh orders on merits and in accordance with law, within a period of four weeks thereafter. In the meantime, the petitioners are directed to deposit 10% of the admitted tax amount on or before 20.4.2015. If the petitioner fails to comply with the same on or before 20.4.2015, the authority is at liberty to proceed with the matter in accordance with law.

The writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Avadi Assessment Circle
No.9, 2nd Street, Kasturibai Nagar, Avadi
Chennai -600 054

1 CC to Mr.P.Rajkumar, Advocate SR.No. 14095

2 CCs to the Government Pleader (T), SR.No. 14088, 14086

W.P.Nos.6933 to 6934 of 2015
and M.P.Nos.1 to 2 of 2015 (3 petitions)

SK (CO)
PSI (24.03.2015)