IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.7661 and 7662 of 2015
and
M.P.No.1 of 2015

Flowserve India Controls (P) Ltd (Rep. by its Plant Controller)
136/3 & 137 Myleripalayam Road
Myleripalayam Post
Othakkalmandapam Coimbatore-641 032. Petitioner

vs.

The Assistant Commissioner(CT)
Avinashi Road Assessment Circle
Coimbatore Respondents

W.P.No.7661/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari Calling for the records on the files of the respondent herein in CST.268755/2011-12 dated 28.11.2014 and quashing the same in so far as it relates to the confirmation of tax demand on the turnover of Rs.88,16,89,662/- being turnover on direct exports and sales to exporters falling under Section 5(1) and 5(3) of the Central Sales Tax Act 1956 respectively.

W.P.No.7662/2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified Mndamus Calling for the records on the files of the respondent herein in CST.268755/2011-12 dated 9.2.2015 and quashing the same in so far as it relates to tax demand on a turnover of Rs.10,15,78,767/-, a turnover of Rs.15,62,752/= and confirmation of higher rate of tax on the turnover of Rs.8,80,624/= as being in violation of the rules of natural justice, while directing the respondent herein to re-dispose the application dated 24.12.2014.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.Kanmani Annamalai, AGP (T)

COMMON ORDER

Petitioner has come forward with the aforesaid prayer.

2. The case of the petitioner is that the respondent issued pre-assessment notice for the assessment year 2011-2012 and the notice proposes to impose higher rate of tax on the inter-State sales to registered dealers under section 8(1) of the CST Act, 1956. Admittedly, there was no proposal to tax the exports. The petitioner could not reply within fifteen days and by letter dated 4.9.2014, they sought for 30 days time. According to the petitioner, without giving opportunity and replying to the representation dated 4.9.2014, the impugned order dated 28.11.2014 was passed confirming the demand on the ground of non-submission of 'C' forms and the the impugned order taxes exports though there was no such proposal in the notice. He reiterates that there is no such proposal for taxing exports in the notice dated 1.8.2014.

3. The petitioner submits that without preferring an appeal or knocking at the doors of the court, they made an application on 24.12.2014 for rectification of the order passed by the respondent. He stated that the petitioner filed the declaration forms and export documents. Though it has not been specifically mentioned that it is a petition under section 84, the respondent considered the request of the petitioner and passed the second order dated 9.2.2015 accepting the contention of the petitioner and revised the assessment insofar as it relates to 'C' form declarations but, refused to re-examine the issue on export even though documents have been filed by the petitioner. According to the petitioner, there are discrepancies and hence, the original order passed with regard to exports cannot be interfered with. The petitioner contended that they were not given any opportunity and if an opportunity is given, they would point out that the veracity of the documents pertaining to exports. The learned counsel for the petitioner submits that the petitioner is agreeable to deposit 10% of the amount demanded.

4. In reply, Mr.Kanmani Annamalai, learned Additional Government Pleader contended that the petitioner has got an alternative remedy and he cannot canvass the point which has not been agitated before the appellate authority. He further contended that even if there is no mention about the tax on exports, on an application filed by the petitioner for rectification of the original order dated 28.11.2014, the same issue was considered and and the authority has rightly rejected the request of the petitioner by an order dated 9.2.2015. He further contended that the contention of

the petitioner that no sufficient opportunity was given to the petitioner is not correct. For the original notice dated 1.8.2014, the petitioner did not reply within fifteen days and only on 4.9.2014, he sent a reply requesting 30 days time even 30 days time and even after 30 days, the the petitioner did not give reply and hence, the impugned order 28.11.2014, has been passed and since the original order has been rectified by the subsequent order, it is open to the petitioner to challenge the second order in accordance with law and they cannot challenge the same before this court.

5. Heard the learned counsel for both the parties. Though two points were raised by the petitioner viz., with regard to non-filing of 'C' forms and assessing of exports by the respondent, since 'C' form declarations have been accepted by the respondent, the only issue is whether levy of tax and disallowing the export by the respondent is valid or not.

6. Admittedly, in the original notice, there is no proposal to tax on the exports and it was pointed out by the petitioner only in the revision petition and the authority has rejected the request of the petitioner and since admittedly, the issue was not there in the original notice and that the petitioner was not given an opportunity to putforth their submission in person, I set aside the impugned order insofar as disallowance of expert alone is concerned and the matter is remitted to the original authority concerned to decide the issue afresh.

7. In case, they propose to levy tax after giving opportunity to the petitioner to putforth their contention, the respondent shall pass appropriate orders on merits and in accordance with law. The petitioner shall appear before the original authority treating the order dated 9.2.2015 as a show cause notice so far as the export issue is concerned and submit their explanation on or before 20.4.2015 after depositing 10% of the demand agreed to be deposited by the petitioner within four weeks from today.

8. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

The Assistant Commissioner(CT)
Avinashi Road Assessment Circle
Coimbatore.

1 cc to Mr. N.Inbarajan,Advocate, SR.No.15208
1 cc to Spl.Government Pleader,(Taxes)Sr.No.15694/15

W.P.Nos.7661 & 7662 of 2015

ca(co)
pmk.11.4.2015