IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.7667 & 7668 of 2015
and
M.P.Nos.1 of 2015

M/s.Nadi Airtechnics Pvt. Limited
Rep by its Managing Director
No.34 G.N.T. Road
Ponniammammedu Madhavaram
Chennai 600 110 ...Petitioner in both WPs

vs.

1. The Commercial Tax Officer
Madhavaram Assessment Circle
170 G.N.T. Road Puzhal
Chennai 600 066

2. The Assistant Commissioner
(Commercial Tax)
Madhavaram Assessment Circle
170 G.N.T. Road Puzhal
Chennai 600 066 ...Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari Calling for the records of the 1st respondent comprised in CST No.721460/2013-14 and CST No.721460/***2012-2013** respectively culminating in the order dated 30.1.2015 and quash the same.

For Petitioner : Mr.Rajnish Pathiyil

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

COMMON ORDER

By consent, the Writ Petitions are taken up for final disposal at the time of admission itself.

2.Heard, Mr.Rajnish Pathiyil, learned counsel appearing for the petitioner and also Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who has taken notice on behalf of the respondents.

3.The petitioner has come up with the present Writ Petitions challenging the impugned order, dated 30.1.2015 and to quash the same.

4. The learned counsel appearing for the petitioner would submit that the first respondent issued notice dated 5.11.2014, proposing to re-open the assessment for the years ***2012-2013 and 2013-2014** and the petitioner also filed his reply on 17.11.2014. But, before ever, the reply could reach the respondent, the first respondent has passed the impugned order dated 30.1.2015. He would also submit that for submitting the Declaration Form in Form-C only a short time was given, since, the transaction of the petitioner involves stock transfer from one office to another office in various parts of the State and other States, there is a lot of difficulty in submitting the Declaration Form in Form-C within the stipulated time. He would further rely on Rule 10(2) of the Central Sales Tax (Tamil Nadu) Rules, 1957, which reads as follows:

> "10. (1)....
>
> (2)A registered dealer who claims to have made a sale to another registered dealer shall in respect of such claim, attach to his return in Form 1, the portion marked 'Original' of the declaration received by him from the purchasing dealer; or duplicate of such declaration/Certificate where the original has been lost. The assessing authority may in his discretion also direct the selling dealer to produce for inspection the portion of the declaration/Certificate marked 'Duplicate'.
>
> Notwithstanding anything contained in the foregoing paragraph and in Rule 5, the selling dealer may, instead of attaching the Form of declaration/ Certificate to the return in Form 1 keep it in his custody subjection to the condition that he submits all the Forms of declaration/ Certificate relating to the

year at any time before the final assessment of the accounts of that year."

Relying on the above provision, the learned counsel submitted that the petitioner can be permitted to produce the Declaration Form in Form-C before the final assessment of the accounts of that year. Unfortunately, without taking note of the above provision, the first respondent has straightaway passed the impugned order. Therefore, the impugned order is per se illegal and non est in the eye of law. As the impugned order is not in consonance with the materials available on record, challenging the same, the petitioner is before this Court with this Writ Petition.

5.The learned Special Government Pleader appearing for the respondents fairly submitted that before ever the reply could reach the respondent, the first respondent, without considering the reply, has straightaway passed the impugned order and therefore, the matter may be remitted back, so that the petitioner will be given an opportunity to produce the Declaration Form in Form-C and in turn, the first respondent will consider the same along with the reply of the petitioner dated 17.11.2014 and redo the assessment for the years ***2012-2013 and 2013-2014**.

6.I have considered the above submissions.

7. The fact remains, the transaction of the petitioner involves stock transfer from one office to another office in various parts of the State and other States and therefore, there is a lot of difficulty in obtaining the Declaration Form in Form-C within the stipulated time and it has been obtained by the petitioner only belatedly and before, he could submit the same and also the reply, the impugned order came to be passed in respect of the assessment years ***2012-2013 and 2013-2014**. The further fact remains that if the petitioner is given an opportunity to produce the Declaration Form in Form-C and also if his reply dated 17.11.2014 is considered, then, he will be able to substantiate his claim that he is not liable to pay any tax.

8. Taking into consideration of the above, as the Declaration Form in Form-C is now readily available with the petitioner and also the contention of the petitioner that if the same is allowed to be produced before the respondent, then, he will be able to substantiate that he is not liable to pay any tax at all and also the fact that the assessee can be permitted to produce the Declaration Form in Form-C, within five years from the assessment year, with sufficient

reasons, I am inclined to set aside the impugned order and the matter is remitted back to the respondent only to the limited extent to decide the matter afresh after taking into consideration the reply of the petitioner dated 17.11.2014 along with Form-C, if it is within time.

9. In the result, the Writ Petitions are allowed and the impugned order of the first respondent, dated 30.1.2015, is set aside. This matter is remitted back to the first respondent to decide the matter afresh. It is further directed that if the first respondent needs any other document, he shall inform the same to the petitioner within fifteen days from today, so as to enable the petitioner to produce the same. The petitioner also without waiting for any further notice shall submit Form-C or any other documents in his custody pertaining to the assessment years ***2012-2013 and 2013-2014** and shall also appear for the enquiry in the date to be fixed by the first respondent. The petitioner is further directed to co-operate with the first respondent in production of further documents, if any and conclude the enquiry. Thereafter, the respondent shall decide the matter afresh and also consider the reply of the petitioner, dated 17.11.2014 and pass orders, on merits and in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar
Dated : 30.03.2015

***Corrected as per order dated**
01.04.2015 and made herein
Sd/- Assistant Registrar (CS-III)
Dated : 07.04.2015

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Commercial Tax Officer
Madhavaram Assessment Circle
170 G.N.T. Road Puzhal
Chennai 600 066

To be substituted to the order already despatched on 01.04.2015

2. The Assistant Commissioner
(Commercial Tax)
Madhavaram Assessment Circle
170 G.N.T. Road Puzhal
Chennai 600 066

+2cc's to M/s.Rajnish Pathiyil, Advocate, S.R.No.18637

+1cc to the Special Government Pleader(Taxes), S.R.No.15693

MG(CO)
CA(30/03/2015)

PSI 07.04.2015