IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.8867 and 8868 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s.Suryadev Alloys & Power Private Limited,
represented by its Director,
Mr.Pankaj Agarwal,
Survey No.298/2, Gummidipoondi Taluk,
New Gummidipoondi - 601 201. ... Petitioner in both W.Ps.

vs.

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
38, GNT Road, Second Floor,
Gummidipoondi. ... Respondent in both W.Ps.

Writ Petitions filed under section 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN/33921702760/2010-11 and TIN/33921702760/2011-12 dated 16.02.2015 and quash the same.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.A.N.R.Jayapratap
Additional Government Pleader (Taxes)

C O M M O N O R D E R

Heard Mr.R.Kumar, learned counsel for petitioner and Mr.A.N.R.Jayapratap, learned Additional Government Pleader (Taxes). With the consent of both the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'Act 2006') with TIN No.33921702760. The petitioner is a manufacturer and dealer in M.S.Billets and TMT Bars. The Officials of the Enforcement Wing inspected the place of business of the petitioner during 27.09.2013, 30.09.2013, 03.10.2013 and 04.10.2013 and after verification of the books of accounts, the officials of the Enforcement Wing concluded

the inspection. Based on the report of the Enforcement Wing, the respondent issued a notice dated 21.02.2014 proposing to assess the dealer and reverse the Input Tax Credit and also proposing to levy penalty under Section 27 of the Act 2006. The petitioner submitted their objections on 28.04.2014. Thereafter, another notice dated 05.12.2014 was issued by the respondent and the petitioner filed their objections on 09.01.2015. However, without considering the objections of the petitioner, the respondent passed the impugned orders. Hence, these present writ petitions have been filed.

3. Learned counsel for petitioner submitted that the petitioner has agreed to pay 5% of the tax amount (in each case) as determined in the impugned orders without prejudice to their rights and the petitioner would cooperate to enable the assessing officer to complete the proceedings afresh.

4. Even though this Court in the judgment in Tulsyan Nec Limited vs. The Assistant Commissioner (CT), Harbour-(III), Assessment Circle, Chennai [CDJ 2015 MHC 789] has held that the Circular No.9 of 2013 dated 24.07.2013 is valid and not contrary or ultra vires to the provisions of the Tamil Nadu Value Added Tax Act and it is not violative of the Article 14 of the Constitution of India or irrational, the subsequent Circular No.25 of 2014 dated 30.05.2014, has clarified that the works contract executed for a developer or co-developer of a SEZ for its authorized operations is exempted from levy of sales tax.

Admittedly, the aforesaid circular has not been taken into account by the authorities while passing the impugned orders. Hence, this Court, without going into the merits of the matter, allows these Writ Petitions by setting aside the impugned orders. The matters are remitted back to the respondent to consider the case of the petitioner afresh by taking into account the Circular No.25 of 2014 dated 30.05.2014 and after affording the petitioner an opportunity of personal hearing, the respondent shall pass appropriate orders on merits and in accordance with law. This Court further directs the respondent to accept 5% of the amount (in each case) as determined in the impugned orders, which the petitioner has agreed to pay the same. The petitioner is directed to appear on 30.04.2015 before the authority, on which date, the petitioner is entitled to make their verbal and written submissions, if any. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To
The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
38, GNT Road, Second Floor,
Gummidipoondi.

1 cc to Mr.R.Kumar ,Advocate, SR.No.17561
1 cc to Spl Government Pleader(T),Sr.No17401

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pmk.11.4.2015