BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.1634 of 2013
and
M.P(MD)No.1 of 2013

Tvl.Rayalaseema Concerte Sleepers(P) Ltd.,
Rep. By its Chief General Manager J.Sankaran,
Railway yard, Thirumangalam. ... Petitioner

Vs.

The Assistant Commissioner(CT),
Thirumangalam,
Madurai District. ... Respondent

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in his proceedings in CST:119999/2008-09, dated 23.01.2013, quash the same as unsustainable, without jurisdiction and also violative of the Principles of Natural Justice in so far as the same has been passed in complete disobedience of the order of the Appellate Deputy Commissioner(CT) (FAC), Madurai(South) passed in petitioner's Appeal No. & Year: CST.A.P.6/2011 dated 18.06.2012 relating to the assessment year 2008-09(CST) and also without grant of sufficient opportunity to the petitioner to file their objections and further direct the respondent to pass order afresh strictly following the directions of the Appellate Authority issued in CST.A.P.6/2011, dated 18.06.2012.

For petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in his proceedings in CST:119999/2008-09, dated 23.01.2013 and quash the same as unsustainable, without jurisdiction and in violation of the Principles of Natural Justice

2. The case of the petitioner is that the petitioner is

manufacturing concrete sleepers to Southern Railways as per their specifications and designs and supplying the same to Railways at their factory as per various clauses contained in the agreement entered into between them. The petitioner is an assessee on the file of the respondent herein under the Tamil Nadu Valud Added Tax Act, 2006 and Central Sales Tax Act, 1956. For the assessment year 2008-2009(CST), the respondent passed an order of assessment, dated 20.01.2011 levying tax of Rs.1,08,65,429/- on the petitioner's supply of concrete sleepers to Southern Railways @ 12.5%, treating the same as inter-state sales to unregistered dealer under Section 8(2) of the CST Act and also reversed certain ITC and further levied penal interest of Rs.27,47,873/-. The petitioner preferred an appeal before the Appellate Deputy Commissioner(CT), Madurai(South) in CST A.P.6/2011 disputing the aforesaid levy of tax and interest on various grounds. The Appellate Authority heard the arguments of both sides on 29.05.2012 and categorically held that the petitioner's transactions of supply of concrete sleepers at their factory site to Southern Railways as per various clauses of the agreement is an intra-state sale and the same cannot be assessed under the CST Act as inter-state sales and accordingly remanded the matter to the respondent to assess the transactions under the TNVAT Act and levy tax @ 4% vide his common order passed in petitioner's Appeals in CST.A.P.5/2011, CST.A.P.6/2011, CST.A.P.7/211, dated 18.06.2012.

3. Pursuant to the order of the Appellate Authority, dated 18.06.2012, the petitioner on 24.07.2012, submitted the certificates from Southern Railways for the period 2007-08, 2008-09 & 2009-10 as prescribed by Notification II/GOMS31/Ct/(B2)/ 27.03.2002 before the respondent. However, the respondent had issued notice, dated 25.10.2012 calling for the petitioner to furnish the certificates from Southern Railways as prescribed by G.O.Ms.No.31/27.03.2002 for proper scrutiny of the turnover liable to be taxed under TNVAT Act, 2006, within fifteen days. The petitioner vide his letter dated 31.10.2012 sent a reply by stating that they had already submitted the certificates before the respondent on 24.07.2012 and the same was also duly acknowledged. However, the petitioner once again submitted copy of the certificates before the respondent and requested to pass order giving effect to the order of the Appellate Authority and consequently refund the excess taxes paid by them. But to the shock and surprise of the petitioner, the respondent without giving effect to the order of the appellate authority, on 29.11.2012 issued notice under the TNVAT Act and CST Act for the years 2007-2008, 2008-2009 & 2009-2010 proposing to levy CST @ 12.5% on the petitioner's transactions and penal interest, in total violation and contrary to the order of the Appellate Authority, dated 18.06.2012.

4. The respondent in the aforesaid notice after extracting certain portions of the appellate order, which in fact

categorically held that the petitioner's transaction are to be treated as sales within the Tamilnadu - Southern Railways, stated that the appellate authority has ''remanded'' the case back to the assessing officer for fresh disposal and proceeded with his unsustainable proposals, which is not permitted under Law that too with a self claim of following the instructions of the appellate authority ''scrupulously''. The said statement and self claim of the respondent is totally wrong .

5. In fact the appellate authority did not remand the case back to the respondent for fresh disposal. The appellate authority with a detailed discussion of facts and law and after considering various judgments of the Honourable Supreme Court of India, categorically held that the petitioner's transactions are to be treated as intra-state sales within the State of Tamilnadu, but remanded the case only for the limited purpose of proper scrutiny of the turnover liable to be taxed under TNVAT Act and for obtaining certificates from southern Railways and thereby not allowing the respondent to go into the question of determining the nature of petitioner's transaction, which he already decided as local sales. Hence, the respondent's proposal to treat the petitioner's transactions as inter-state sales is unsustainbale, without jurisdiction and against the very scheme of the Act under which the respondent is functioning. The petitioner received the above said notice, dated 29.11.2012 on 03.12.2012 and was having time till 18.12.2012 to file their objections. Hence, the petitioner vide letter, dated 12.12.2012 requested a month time for filing their objections. The said letter was received by the respondent on 13.12.2012. But due to ill-health of the person in-charge of the sales tax matter and the non-availability of the petitioner's sales tax consultant, the petitioner was not able to make ready the objections before one month time they requested. Hence, once again the petitioner vide letter, dated 12.01.2013 requested further 20 days time to file their objections. While so, on 24.01.2013, the petitioner was served with an order passed in CST:119999/2008-09, dated 23.01.2013 confirming his unsustainable proposals contained in notice dated 29.11.2012. Hence, the petitioner has come forward with the present Writ Petition challenging the notice issued by the respondent, dated 23.01.2013.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the materials available on record.

7. I am of the opinion that when the appellate authority has remanded the matter with a detailed discussion that the petitioner's transaction are to be treated as intra-state sales within the State of Tamilnadu and the turnover liable to be taxed under TNVAT Act, the respondent had issued the impugned notice in total violation of the order passed by the appellate authority and

the same is not legally sustainable. If the respondent had felt that the order passed by the appellate authority is not correct, the respondent ought to have filed an appeal against the order of the appellate authority. But instead of doing so, in total violation to the order of the Appellate Authority, the present notice has been issued and hence the same is liable to be set side.

8. In the result, the Writ Petition is allowed and the impugned order of the respondent, dated 23.01.2013 is set aside and the respondent is directed to dispose of the matter as per the order passed by the appellate authority, dated 18.06.2012, within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner(CT),
Thirumangalam,
Madurai District.

PM
TE/MP/ : 26/10/2015 : 4P/2C

W.P(MD).No.1634 of 2013
and
M.P(MD)No.1 of 2013
01.10.2015