IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:04.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4149 of 2014 and
MP.Nos.1 & 2 of 2014

M/s.Sri Perumal Steel Corporation
Represented by its Proprietor Mr.P.Jayapalan,
No.11, Nadu Agraharam, Ariyalur - 621 704
Ariyalur District. ...Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Ariyalur Assessment Circle, Ariyalur. ...Respondent

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN 33843601191/2009-2010 and quash the impugned order dated 30.07.2013 as passed without authority of law, contrary to section 3(4)(b) of the TNVAT Act and also against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader

ORDER

Heard Mr.P.Ramkumar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with their consent, the Writ Petition is taken up for final disposal.

2.The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has challenged the order of assessment for the year 2009-2010. The petitioner was issued a notice dated 29.04.2013 which was pursuant to a surprise inspection by the Enforcement Wing Officials on 25.02.2010 during which certain defects came to the light of the department. Accordingly, the defects were notified to the petitioner and the petitioner was informed that the respondent proposed to revise the assessment for the relevant year under Section 27 of the TNVAT Act and are proposed to re-determine the total taxable turnover. Apart from that, the respondent also proposed to levy penalty. The petitioner submitted their objections and after which, the respondent has passed the impugned order.

3.On a perusal of the impugned order, it is seen that in the penultimate portion of the order, the respondent stated that the petitioner's total turnover is crossed Rs.50 lakhs during the previous year i.e. 2008-2009 and filed revised returns for the year 2009-2010 in pursuance to the surprise inspection conducted on 25.02.2010 and did not produce purchase bills during inspection and therefore, the claim for ITC is not considered. The respondent, making such observations in the impugned order of assessment, accepted the date of revised return as 19.03.2010. Thus, ITC was not considered since the petitioner has not produced the purchase bills. The other issue would be whether at all the petitioner's return which was filed on 19.03.2010 is a revised return. According to the department, the turnover exceeded Rs.50 lakhs in the assessment year 2008-2009. Therefore, the petitioner was statutorily bound to file Form I return with effect from 01.04.2009 and after inspection, the petitioner cannot be permitted to file revised return on 19.03.2010 in Form I. However, in my view this issue can be left open to be adjudicated before the respondent.

4.The learned counsel for the petitioner submitted that the petitioner was not put on notice that documents viz., purchase bills have to be produced to be entitled for relief. Therefore, the petitioner takes leave of this Court to grant them one more opportunity to place all the materials before the Assessing Officer.

5.In the light of the above submission, this Court is inclined to grant one more opportunity to the petitioner subject to certain conditions.

6.Accordingly, the petitioner is directed to pay 15% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. If the petitioner complies with the condition, then, along with the payment, the petitioner is entitled to submit his objections by treating the impugned proceedings as a show cause notice. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law, after considering all issues pointed out by the petitioner. If the petitioner fails to comply with the condition within the time stipulated in this order, the benefit of this order will not enure in favour of the petitioner and it is open to the respondent to proceed further in accordance with law.

7.The Writ Petition is disposed of, with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sgl

To

The Assistant Commissioner (CT) (FAC),
Ariyalur Assessment Circle,
Ariyalur.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No. 37414

+1cc to the Government Pleader, S.R.No. 37815

W.P.No.4149 of 2014

KGK(CO)
PSI(23/07/2016)