IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.Nos.11608 and 11609 of 2016
and M.P.Nos10006, 10007 and 10008 of 2016

M/s Kamalan Engineering Co
rep by its Proprietor Ravi Kumar
No.714/6, MTH Road,
Chennai- 600 050
Now at: No.114/5, Periyar Pathai,
Choolaimedu, Chennai-600 094

..Petitioner in both the writ petitions

vs

The Deputy Commercial Tax Officer,
(redesignated as Commercial Tax Officer)
Korattur Assessment Circle,
No.18, Station Road, Korattur,
Chennai 600 080

.. Respondent in both the writ petitions

W.P.No.11608 of 2016 Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in CST No.635124/2004-05 dated 29.09.2006 and quash the same and direct the respondent to consider and grant concessional rate of tax and exemption based on original/duplicate portion of C forms, C & E 1 forms and cancel the penalty.

W.P.No.11609 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in TNGST No.1440627/2004-05 dated 05.10.2006 and quash the same and direct the respondent to grant concessional rate of tax on sales made to State Transport Corporation as per Notification No.II(1)/CT/19(b-11)/2002 issued in G.O.Ms.No.31, Commercial Taxes (B2) daetd 27.3.2002 and cancel the penalty.

For petitioner : Mr.Pramod Kumar Chopda

For respondent : Mr.S. Manoharan Sundaram
AGP (T)

COMMON ORDER

The petitioner has filed the above writ petitions to issue Writs of Certiorarified Mandamus to call for the records of the second respondent in CST No.635124/2004-05 dated 29.09.2006 and TNGST No.1440627/2004-05 dated 05.10.2006 and quash the same and direct the respondent to consider and grant concessional rate of tax and exemption based on original/duplicate portion of C forms, C & E 1 forms and cancel the penalty and also to grant concessional rate of tax on sales made to State Transport Corporation.

2. According to the petitioner, the petitioner received Assessment Order for the Assessment Year 2004-2005 under CST and TNGST Acts, wherein, the respondent levied higher rate of tax on sale made to Government Department and also levied penalty u/s 12(3)(b) on the ground that the same were not covered by Certificate. Similarly, in CST Assessment Order, the respondent levied higher rate of tax on inter-state sale instead of concessional rate of tax, levied tax on transit sale instead of exemption and also levied maximum penalty u/s 9(2-A) of CST Act r/w Sec.12(3)(b) of TNGST Act on the ground that the same were not covered by statutory declaration forms.

3. According to the petitioner, after receipt of the said Assessment Orders, furnished the declaration forms before the respondent requesting him to revise/rectify the Assessment Orders. On 10.10.2014, the petitioner received a Notice in Form No.4-Demand prior to attachment of land for the alleged arrears of tax in CST and TNGST, totalling in all Rs.1,60,607/-. The said notice was followed by further notice dated 19.12.2014 u/s 27 in Form No.5 Notice of Attachment.

4. Mr.Pramod Kumar Chopda, learned counsel appearing for the petitioner, submitted that the petitioner was not given an opportunity of personal hearing and without hearing the petitioner, the respondent had passed the impugned orders under CST and TNGST Acts. That apart, the learned counsel submitted that the petitioner had closed the business and he is working on monthly salary. The learned counsel further submitted that the petitioner is having the duplicate "C" and "E" forms with him and therefore, the respondent may be directed to consider the "C" and Ë" forms and decide the matter afresh. That apart, the learned counsel submitted that the petitioner is willing to pay

25% of the demand, in each case, made by the respondent and in such an event, the impugned orders may be set aside and the matter may be remitted back to the respondent for fresh consideration.

5. Mr.S.Manoharan Sundaram, learned Additional Government Pleader, taking notice for the respondent, submitted that the petitioner may be directed to pay 25% of the demand, in each case, within a stipulated time and on payment of 25% of the demand, in each case, the interim orders may be set aside and the respondent may be directed to decide the matter afresh, after affording an opportunity of personal hearing to the petitioner.

6. Insofar as the penalty is concerned, Mr.S. Manoharan Sundaram, learned Additional Government Pleader fairly submitted that the respondent had erroneously levied penalty and the same may be setaside.

7. In view of the submissions made by the learned counsel on either side, the levy of the penalty, made by the respondent, is set aside. Since the petitioner was not given an opportunity of personal hearing and could not produce the "C" and "E" forms before the respondent, in the interest of justice, the impugned orders dated 29.09.2006 and 05.10.2006 are set aside on condition that the petitioner paying 25% of the demand, made by the petitioner, in each case, within a period of four weeks from the date of receipt of a copy of this order and on payment of 25% of demand, made by the respondent, in each case, the respondent is directed to decide the matter afresh, after taking note of the duplicate "C" and "E" forms, to be produced by the petitioner and also after affording due opportunity of personal hearing to the petitioner. The petitioner is directed to produce duplicate Forms "C" and "E" within a period of two weeks from the date of making the payment of 25% of demand, in each case, made by the respondent. With these observations, both the writ petitions are disposed of. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sr

To

The Deputy Commercial Tax Officer,
(redesignated as Commercial Tax Officer)
Korattur Assessment Circle,
No.18, Station Road, Korattur,
Chennai 600 080

+ 1 cc to Mr.T. Pramod Kumar, Advocate SR.19127

W.P.Nos.11608 &
11609 of 2016

EV(CO)
Eu 29.03.16