IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

W.P.No.769 of 2014
and M.P.No.1 of 2014

M/s.Arun Smelters Limited,
rep.by its Director: Umesh Madan,
No.804, Ethiraj Salai,
Egmore, Chennai -8. ... Petitioner

Vs.

The Assistant Commissioner (CT)
Egmore II Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chetpet, Chennai - 31. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of Certiorari to call for the records relating to the impugned order passed by the respondent in CST/637622/2010-11 dated 5.11.2013 and quash the same as arbitrary, violative of principles of natural justice and without jurisdiction.

For Petitioner : Mr.K.Jayachandran

For Respondent : Mr.V.Haribabu,
Addl.Govt.Pleader (Taxes)

ORDER

The petitioner is an assessee on the rolls of the respondent. The respondent has drawn a pre-assessment notice on 15.10.2013, which was received by the petitioner on 23.10.2013, proposing to determine the total and taxable turnover for the assessment year 2010-11 and to finally assess them under the Central Sales Tax Act, 1956. In the said notice, the respondent has proposed to take the inter-State sales of iron and steel without C-Form in a sum of Rs.24,93,619/- and proposed to levy tax at the rate of 4% thereon. The petitioner/assessee filed a crisp reply on 4.11.2013 setting forth that the assessee used to submit all the relevant forms for claiming exemptions and concessional rate of tax at the time of regular assessment and hence he submitted the statement of account and also produced

Form-C for consideration of the assessing authority. In response thereto, an order of assessment has been passed on 5.11.2013, which is challenged in this writ petition.

2. It will be relevant to notice that in the first six passages of the impugned assessment order dated 5.11.2013, the assessing authority has adverted to the contents leading upto the issuance of the pre-assessment notice dated 15.10.2013. In pargraph No.7 of the said order, the contents of the reply furnished by the assessee to the said show cause notice have been referred to and then proceeded to determine the total and taxable turnover in the order of assessment. Ultimately, the assessing authority has determined the total turnover as Rs.1,59,87,087/- and the exemption allowed thereon was to the order of Rs.70,57,109/- and thus the taxable turnover has been worked out as Rs.2,30,44,196/-.

3. Learned counsel for the petitioner/assessee would submit that the pre-assessment notice has not adverted to any of contents of the final order in paragraph No.8 onwards. Therefore, it is contended that that the final assessment order, not being in conformity with the pre-assessment notice, is not sustainable.

4. Though the learned Additional Government Pleader for the Sales Tax Department tried to justify the final order passed, but, however, when pointedly drawn to his attention about the variance of the contents between the pre-assessment notice and the final assessment order, the variance in the contents has been admitted.

5. In view of what has emerged, the only question that requires to be answered by this Court in this writ petition is, whether the final order of assement is sustainable or not. The pre-assessment notice dated 15.10.2013 is in the nature and in the form of a show cause notice. It is essentially intended to provide an opportuntiy to the assessee to put forth its side of defence so that the assessing authortiy can apply his mind and then arrive at a firm conclusion. If the pre-assessment notice does not advert to all the facts, which are likely to be taken into account and consideration by the assessing authority for passing the assessment order, then it ceases to have any meaning insofar as the assessee is concerned as he will not be able to know of the material the assessing authority is ultimately likely to take into account and consideration. It is as good as denying a meaningful right for the assessee to raise his objection. A pre-assessment notice or a show cause notice cannot

be reduced to an empty formality. It has a purpose and aim to be achieved, which is to provide an opportunity to the person to whom it is directed to know on what lines the assessing authroity is likely to conclude the issue finally. Only when such an effective opportunity is provided, the assessee can come up with a satisfactory explanation and thereafter it is for the assessing authority to take into account the quality of the explanation offered and whether it is sustainable in accordance with law. But the pre-assessment notice is very laconic. Then, the assessee will be left with no meaningful opportunity to furnish any reply. He will be essentially groping in the dark and it is left for him to guess on what lines the assessing authority is likely to conclude the entire issue. That was not the purpose behind the exercise. For this reason alone, I am satisfied that the impugned order of assessment dated 5.11.2013 deserves to be set aside.

6. Accordingly, the impugned order is set aside and the respondents are at perfect liberty to provide an opportunity afresh by drawing a detailed show cause notice to the petitioner and then secure the necessary explanation from him and duly taking the same into account and consideration and by reflecting the reasons for the conclusion drawn, an order of assessment can be passed. I hope and trust that this exercise would be accomplished in a maximum span of three months time from today.

7. With the above observation, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.
usk

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner (CT)
Egmore II Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chetpet,
Chennai - 31.

+ 1 cc to Mr.K.Jayachandran, Advocate SR 24130
+ 1 cc to Spl.Govt.Pleader (Taxes) Sr 24443

rsy(co)
prk29/4

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