IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.21606 of 2014
and
M.P.No.1 of 2014

Sri Krishna Smelters Ltd.,
rep. by its Managing Director,
R.Duraisamy ...Petitioner

Vs.

The Assistant Commissioner (CT)
Sankari Assessment Circle,
Sankari, Salem District. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records from the files of the respondent in TIN No.33813226351/2007-08, dated 18.06.2014, and to quash the same as being without jurisdiction and authority of law.

For Petitioner :Mr.R.Senniappan

For Respondent :Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, for the respondent.

2. In this Writ Petition, the petitioner seeks for quashing the notice issued by the respondent, dated 18.06.2014, proposing to revise the assessment, under Section 27 (i) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as, 'TNVAT Act') for the assessment years 2007-08 to 2012-13.

3. The petitioner is a registered dealer, on the file of the respondent, under the provisions of TNVAT Act. It appears that the Department of Customs and Central Excise conducted inspection in the place of business of the petitioner, pursuant to which, proceedings were initiated by the Central Excise Department, by issuing a show cause notice. This resulted in an

adverse order against the petitioner, which is now subject matter of challenge before the Customs, Excise Service Tax Appellate Tribunal (CESTAT), in Ref No.E/40771/2014-DB. Based on the show cause notice, which was issued by the Central Excise Department, a copy of which appears to have been forwarded to the respondent, the impugned notice has been issued.

4. On perusal of the impugned notice, it is clear that no independent enquiry was conducted by the respondent, but the impugned notice was solely based upon the allegation levelled against the petitioner by the Central Excise Department, in the show cause notice issued by them, for the relevant years. Thus, at the stage, when the impugned notice was issued by the respondent, the matter before the Central Excise Department was only at the stage of show cause notice, but now, resulted in an adverse order against the petitioner, which is challenged before the CESTAT. In any event, the respondent cannot revise the assessment under the provisions of TNVAT, without conducting enquiry and affording opportunity of personal hearing to the petitioner. Further, the petitioner would contend that liability cannot be fixed merely on the basis of the electricity consumption, and in this regard, reliance has been placed on the decision of the Hon'ble Division Bench of this Court, in the case of (State of Tamil Nadu Vs. V.S.S. and Company) reported in (2013) 60 VST 289 (Mad).

5. In my view, the impugned proceedings, being only a show cause notice, the same cannot be interfered with in this Writ Petition at this juncture, especially, when proceedings initiated by the Central Excise Department has resulted in an adverse order against the petitioner, which having been challenged before the CESTAT.

6. In the light of the above, the Writ Petition is disposed of by directing the petitioner to submit their objections within a period of three weeks from the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and independently consider the matter based on the documents placed before him, and pass appropriate orders on merits and in accordance with law within a period of eight weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Sankari Assessment Circle,
Sankari, Salem District.

+1cc to M/S.R.Senniappan, Advocate Sr.50396

Writ Petition No.21606 of 2014

mp[co]
srg 22/09/2016