IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.12720 to 12724 of 2015
&
M.P.Nos.1 to 1 of 2015 (5 Mps)

M/s.United Metal Industries
Represented by its Partner
No.98, Basin Road
Thiruvottiyur
Chennai - 600 019 ... Petitioner in all the writ petitions

Vs.

The Assistant Commissioner (CT)
Kaladipet Assessment Circle
703, T.H.Road, Thiruvottiyur
Chennai - 600 019 ... Respondent in all the writ petitions

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the impugned proceedings of the respondent in TIN/3372100015/2007-2008, TIN/3372100015 /2008-2009, TIN/3372100015/2009-2010, TIN/3372100015/2010-2011, TIN/3372100015/2012-2013 dated 18.03.2015 and quash the same as passed without authority of law and also contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

In all these writ petitions, the petitioner, which is a manufacturing industry, is registered under the provisions of the Tamil Nadu Value Added Act, 2006 and Central Sales Tax Act, 1956. The orders impugned in these writ petitions are orders of assessment passed by the Assessing Officer in respect of five years, namely 2007-2008,2008-2009,2009-2010,2010-2011,2012-2013.

2. It may not be necessary for this Court to go into the merits of the Assessment nor does this Court proposes to undertake such an exercise for the following reason:

The petitioner received a notice from the Assessing Officer proposing to revise the assessment already made. On receipt of notice, the petitioner sent a representation on 22.02.2015. While acknowledging the receipt of notice, the petitioner stated that they have to gather all necessary documents for about four years so that they can submit their objections and therefore, requested the authority to grant extension of time by one month. This was sent by the petitioner by speed post to the Assessing Officer on 20.02.2015. Thus, to enable them to submit their objections, the petitioner filed an application under the Right to Information Act on 25.02.2015 and sought for the following documents:

i. Letter sent to the Deputy Commissioner / your immediate Higher Officer seeking his permission to deviate from the audit para stating that the reversal of ITC invoking Section 19(5)(c) of the TNVAT Act do not attract in our case.

ii. Any other communication in regard to the above issue either received by you from your higher officials or sent by you to your higher officials.

3. In this application dated 25.02.2015, the petitioner has mentioned that he has sent a letter requesting for time to submit reply to the proposal. The Assessing Officer appears to have taken into consideration the request made under the Right to Information Act as if to be a reply/objection to the proposal and has passed an impugned order. The Assessing Officer, having accepted the receipt of the application dated 25.02.2015, cannot deny the fact that the petitioner has sent an earlier letter dated 22.02.2015 requesting for extension of time by one month to submit their objections. Therefore, the Assessing Officer should have either accepted or rejected the request for extension of time and then proceeded to afford an opportunity of personal hearing to the petitioner or proceeded with the matter or if it is presumed that he has granted one month time, though not in writing, then upto 23.03.2015, the petitioner had time to submit their objections. But, unfortunately the impugned orders have been passed well before the said date i.e., 18.03.2015. That apart, the Assessing Officer ought not to have proceeded to finalize the assessment based on the averments made by the petitioner in the application filed under the Right to Information Act. Hence, for all the above reasons, the impugned orders call for interference.

4. The learned counsel for the petitioner submitted that subsequently the information sought for by the petitioner under the Right to Information Act has been provided for on 06.05.2015 and from the information provided, it is submitted that there is no case for revision of the assessment already concluded. In any event, this issue can always be raised by the petitioner while filing their objections, which liberty this Court proposes to grant.

5. In the light of the above, all the writ petitions are allowed and the impugned orders dated 18.03.2015 are set aside and the matter is remitted back to the respondent for fresh consideration. The petitioner is directed to file objections along with supportive documents within a period of six 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, verify the documents produced by the petitioner and pass a speaking order on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (CT)
Kaladipet Assessment Circle
703, T.H.Road, Thiruvottiyur
Chennai - 600 019.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.29735
+1cc to the Special Government Pleader(T), S.R.No.29948

W.P.Nos.12720 to 12724 of 2015
&
M.P.Nos.1 to 1 of 2015 (5 Mps)

BVR(CO)
CA(15/06/2016)