In the High Court of Judicature at Madras

Dated : 15.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24422 of 2015 and MP.Nos.1 and 2 of 2015

K.K.R.Metal Components, Chennai-98. ...Petitioner

Vs

1.The Appellate Deputy Commissioner
(CT),3rd floor PAPJM Building Annex
No.1 Greams Road
Chennai South, Chennai-6.

2.The Assistant Commissioner (CT)
(FAC), Pattravakkam Assessment
Circle, Chennai-49. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the proceedings in the impugned order dated 17.7.2015 in A.P.No.31 of 2015 passed by the first respondent in the assessment proceedings CST No.726015/2013-2014 bearing TIN No.33741362001, quash the same and consequently remand the same to the second respondent by directing to redo the assessment by de novo proceedings in compliance with the principles of natural justice.

For Petitioner : Mr.S.Makesh
For Respondents : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard both. By consent, the writ petition itself 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 (hereinafter called the Act), has filed this writ petition challenging the order passed by the first respondent, who is the Appellate Authority, who had dismissed the appeal petition filed by the petitioner against the order passed by the second respondent dated 10.4.2015 passed under Section 84 of the Act. The appeal filed by the petitioner was dismissed, as no appeal was maintainable against an order passed by the Assessing Officer rejecting an application to rectify the order of

assessment by exercising the power under Section 84 of the Act. The petitioner also sought for a further relief to direct the second respondent to redo the assessment by conducting de novo proceedings.

3. The petitioner is carrying on the business of manufacture of precision machined and pressure die casting components. For the assessment year 2012-13, the order of assessment was passed on 25.11.2014 and with regard to taxable turnover not covered by C-Forms, the Assessing Officer adopted the rate of 5% and completed the assessment. For the year 2013-14, while computing the rate of tax where C-Forms have not been filed, the Assessing Officer adopted the rate of 14.5%. This, according to the petitioner, was erroneous, since, in the earlier assessment order, the rate of tax was adopted at 5%.

4. Therefore, the petitioner approached the second respondent by filing an application under Section 84 of the Act stating that this mistake, which is apparent on the face of the record, may be rectified. That application was rejected by the second respondent by an order dated 5.3.2015 and that was the first time the second respondent informed the petitioner that the reason for adopting higher rate of tax at 14.5% was on the ground that the turnover in question relates to machinery spares falling under Section 2(11) of the Act. Against this order, the petitioner preferred an appeal to the first respondent and it was dismissed.

5. The order passed by the first respondent rejecting the appeal petition is justified, since, no appeal lies against an order passed under Section 84 of the Act. Nevertheless, it is to be seen that the second respondent could not have adopted the rate at 14.5%, when, for the earlier assessment year i.e. 2012-13, the rate of tax was 5%. Furthermore, only while dismissing the petitioner's application under Section 84 of the Act, by an order dated 5.3.2015, the second respondent stated the reason as to why he had adopted 14.5%. Therefore, the petitioner had no opportunity to raise their objections on the said issue, as it was never pointed out while finalising the assessment by order dated 6.2.2015.

6. Further, the learned counsel for the petitioner submits that after filing of the writ petition, the second respondent issued a notice to the petitioner to reopen the assessment for the assessment year 2012-13.

7. In the light of the above facts, while holding that the challenge to the order passed by the first respondent dated 17.7.2015 is unnecessary, the writ petition is disposed of, by setting aside the order of assessment dated 6.2.2015 and a direction is issued to the second respondent to issue a show

cause notice to the petitioner clearly setting out the basis for the proposal that he proposes to make. After giving adequate opportunity to the petitioner to submit their objections and after granting an opportunity of personal hearing, the second respondent shall take a reasoned decision on merits and in accordance with law. No costs. Consequently, the above MPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Appellate Deputy Commissioner (CT),
Chennai South, 3rd floor PAPJM Building Annex,
Chennai-6.

2.The Assistant Commissioner (CT) (FAC),
Pattravakkam Assessment
Circle, Chennai-49.

+1 cc to Mr.S.Makesh vide sr.32473
+1 cc to Special Government Pleader(Taxes)
chennai sr.33322

WP.No.24422 of 2015 &
MP.Nos.1 and 2 of 2015

skv(co)
aa01/07/2016