IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29933 of 2015 &
MP.No.1 of 2015

M/s.Emkay Alloys Private Limited,
Represented by K.Durairaj,
Managing Director,
S.F.No.645/1, G.D. Road,
Kamaraj Nagar, Kolappalur,
Gobichettipalayam, Erode District. .. Petitioner

Vs.

The Commercial Tax Officer,
Gobichettipalayam. .. Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records on the files of the respondent in TIN: 33512962191/2012-13 dated 1.6.15 and quash the same as being without jurisdiction, without authority of law and hence invalid and illegal, to the extent the order demanded and levied interest under Section 42(3) of the Tamil Nadu Value Added Tax Act.

For Petitioner : Mr.C.Venkatraman

For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

Heard Mr.C.Venkatraman, learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader accepting notice for the respondent and with their consent, the Writ Petition is taken up for final disposal.

2.The petitioner has challenged the impugned order which is an assessment order for the year 2012-2013 only with regard to levy of interest under Section 42(3) of the Tamil Nadu Value Added Tax Act. It appears that the Enforcement Wing Officials inspected the place of business of the petitioner on 28.12.2012 and two cheques were forcibly taken from the petitioner for a sum of Rs.2,00,000/- and Rs.1,99,748/- respectively.

3.The respondent in the counter affidavit would state that at the time of inspection, the petitioner voluntarily handed over two cheques to the Enforcement Officers. This Court has repeatedly held that Enforcement Officers should not compel the dealers to part with payment towards tax and penalty nor collect any postdated cheques and cheques drawn in favour of the Assessing Officers towards the future liability of tax that may be assessed after report is given by the Enforcement Wing.

4.In the instant case, the issue is that one of the cheques for Rs.2,00,000/- has been realized on 10.01.2013. In respect of the other cheque, the stand taken in the counter affidavit is that it is not realized. Conveniently, in the counter affidavit, the date of presentation of cheque has not been mentioned. The petitioner has not furnished his bank statements to show that the second cheque though presented was dishonoured or returned for some reason. These issues could have been sorted out had the respondent issued a notice before demanding interest that too after three years from the date on which the cheques were taken by the Enforcement Wing. Therefore, to that extent, the impugned order is in violation of the principles of natural justice.

5.Accordingly, the Writ Petition is allowed and the impugned order is set aside in so far as it directs payment of interest under Section 42(3) of the Act. The respondent is directed to issue a show cause notice to the petitioner clearly indicating on what date the cheque was presented with their bankers and what is the reason for non-realization. On receipt of such notice, the petitioner shall submit his objections, after which, the respondent after afford an opportunity of personal hearing, pass a reasoned order on merits and in accordance with law. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sgl
To
The Commercial Tax Officer,
Gobichettipalayam.
1 cc to Special Government Pleader,(Taxes) sr.40748
1 cc to Mr.C.Venkatraman, Advocate, sr.40729

W.P.No.29933 of 2015

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kra 02.08.2016