IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.39666 and 39667 of 2015

Emrald Resilient Tyre Manufactures
Private Limited,
(Represented by its Director
V.Krishnaram)
No.3, Nineth Lane, Sastri Nagar,
Adyar, Chennai - 600 020. .. Petitioner
in both W.Ps

Vs

The Assistant Commissioner (CT),
Adyar Assessment Circle,
46, Greenways Road,
Chennai - 600 028. .. Respondent
in both W.Ps

Prayer in W.P.No.11240 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in CST/768832/2012-13 dated 05.10.2015, quashing the same in so far as it relates to levy of tax on the turnover of Rs.62,49,65,890/- and the levy of higher rate of tax at 14.5% instead of 2% on the turnover of Rs.20,30,63,941/-.

Prayer in W.P.No.11241 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent herein to rectify the assessment order dated 05.10.2015 and delete the tax demand on a turnover of Rs.62,49,65,890/- while also applying the concessional rate of 2% on the Inter-State sales effected by the petitioners to registered dealers on the turnover of Rs.20,30,63,941/- after accepting the C declaration forms as prayed for by the petitioners in their application dated 30.11.2015.

For Petitioner
in both W.Ps. : Mr.N.Prasad
For Respondent
in both W.Ps. : Mr.Cibhi Vishnu
Additional Government Pleader

COMMON ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.Cibhi Vishnu, learned Additional Government Pleader appearing for the respondent and with their consent, these Writ Petitions were taken up for final disposal.

2.In W.P.No.39666 of 2015, the petitioner has challenged the order of revision of assessment for the assessment year 2012-2013 under the provisions of Central Sales Tax Act.

3.In W.P.No.39667 of 2015, the petitioner seeks for direction upon the respondent to rectify the assessment order by taking into consideration of their application dated 30.11.2015.

4.The impugned assessment order is being challenged by the petitioner primarily on the ground of violation of principles of natural justice. According to the petitioner, the pre-revision notice was issued on 05.01.2015 and the petitioner is said to have appeared before the Officer who was then holding the post of Assistant Commissioner (CT), Adyar Assessment Circle and produced the books of accounts. However, all of a sudden, the impugned order came to be passed on 05.10.2015 after a new officer took over the said post. It is submitted that in the interregnum, the petitioner has also been granted refund under the provisions of the Tamil Nadu Value Added Tax Act. Therefore, if the said order which has been passed by the present officer under Section 18(3) read with Rule 11(2) of the TNVAT Rules, is taken into consideration of the input tax on the export transaction for the month of December 2012, the present order would not have been passed. Considering the above fact, this Court is of the view that the assessment should be re-done after affording an opportunity to the petitioner.

5.In the light of the above, instead of setting aside the impugned proceedings, the petitioner is directed to treat the impugned assessment order as show cause notice and submit their objections within a period of two weeks from the date of receipt of a copy of this order and on receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law.

6.In the light of the order passed in W.P.No.39666 of 2015, no orders are required in W.P.No.39667 of 2015. Accordingly, W.P.No.39666 of 2015 is disposed of and W.P.No.39667 of 2015 is closed. No costs.

7.As this Court has directed the impugned assessment order to be treated as a show cause notice, the question of enforcing the same or initiating coercive steps against the petitioner for recovery of the tax and penalty does not arise and it shall abide by the orders to be passed by the Assessing Officer in terms of the above direction.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT),
Adyar Assessment Circle,
46, Greenways Road,
Chennai - 600 028.

+1 cc to M/s.N.Inbarajan Advocate sr.37833

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