IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 17.8.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24053 of 2016

and WMP.20565/2016

M/s.Shree Ganesh Steel Rolling Mills Ltd Rep by its Director 14A Ennore High Road Thiruvottiyur Chennai-19 ... petitioner

versus

1 The Assistant Commissioner(CT)
Thiruvottiyur Asst Circle Chennai-19

2 The Commercial Tax Officer(FAC) Group-IV CEW-I Enforcement-I
Chennai-600 006

3 The Joint Commissioner(CT)
Enforcement-I Chennai-600 006 ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the impugned proceedings of the first respondent in Tin: 33911100058/2009-2010 and quash the order dated 09.06.2016 as passed contrary to the provisions of the TNVAT Act Violating the directions of the Madras High Court in W.P.Nos.23741 to 23745/2014 dated 03.09.14 and against the principles of natural justice.

For petitioner ... Mr.P.Rajkumar
For respondents ... Mr.S.Kanmani Annamalai, A.G.P.

O R D E R

I have heard the learned counsel for the parties and perused the materials placed on record as well as written instructions given by the respondents to the learned Additional Government Pleader, which are in the nature of parawise comments.

2. The short issue that falls for consideration is as to whether the first respondent was justified in completing the assessment in the manner done, by virtue of the impugned order.

3. The details which are required to be looked into are

briefly stated hereunder:-

> (a) The petitioner was earlier issued with notice dated 30.4.2014, where,in the course of revision of assessment under Section 27 of the Tamil Nadu VAT Act, 2006, the first respondent proposed to reverse ineligible claim of ITC, and assess the sales tax returns, for which no proof of records were filed. This notice was issued under Section 27(3) of the Act, which was based on inspection conducted by the enforcement wing officials in the place of business of the petitioner on 18.12.2013. The said notice was challenged by the petitioner by filing Writ Petition Nos.23741 to 23745 of 2014. All the Writ Petitions were disposed of by common order dated 3.9.2014.
>
> (b) Pursuant to the direction issued therein, second notice dated 29.7.2015, which is impugned in this Writ Petition, was issued to the petitioner. Challenging the same, the present Writ Petition has been filed.

4. In paragraph 6 of the said notice, the first respondent has specifically called upon the petitioner to furnish details mentioned in the Annexures I and II for verification, with complete set of balance sheet for the said year. Annexures I and II called for various details pertaining to ITC, value of legal purchases, transport charges etc. The petitioner while submitting their objection, has filled in the annexures and furnished all the details, after which, the assessment has been completed. But while doing so, the Assessing Officer thought fit not to disbelieve the details furnished by the dealer as he has stated that dealer has discharged the initial burden of proof. Therefore, this should mean that the Assessing Officer was satisfied with the particulars furnished. However, in the next sentence, the Assessing Officer denied the entire input tax credit on the ground that the petitioner has not produced proof for transfer or delivery of goods and the actual movement of goods have to be proved by way of lorry receipt, delivery note, and the actual movement of goods have to be proved by way of lorry receipt, delivery note, freight charges payment details or by other relevant records for the delivery of goods. However, I find that in the annexure 1 and 2, appended to the show cause notice, these details were not called for by the Assessing Officer. However, the burden of proof is on the assessee to prove that they are entitled to avail input tax credit.

5. The respondent has in fact, accepted that the petitioner/dealer has discharged the initial burden of proof. If that is so, then the burden of proof shifts to the Assessing Officer, who has to establish that despite the details furnished by the petitioner, the petitioner is not entitled for the input tax credit. The petitioner's contention is that for inward movement of goods, they are not statutorily bound to produce any transport documents. However, the fact remains that in the annexures which were filed by the petitioner along with objections, it is seen that substantial amount of money has been incurred for the inward transport of the goods. Therefore, there shall be no difficulty on the part of the petitioner to furnish those details.

6. In the light of the above, without setting aside the impugned proceedings in its entirety, observations with regard to the failure to produce proof for transfer of delivery of goods alone is set aside and the matter is remanded to the first respondent for fresh consideration. The petitioner is directed to furnish additional particulars with regard to the transporters who were engaged by them for inward transfer of goods, such as name of the transporter, lorry receipt nos., payment details etc. and every allied particulars pertaining to the transfer. On receipt of the same, the first respondent is directed to verify the details and make a proper enquiry, after affording an opportunity of personal hearing to the petitioner in which they can raise objections, if any and re-do the assessment in accordance with law.

7. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, W.M.P.No.20565 of 2016 is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1 The Assistant Commissioner(CT)
Thiruvottiyur Asst Circle Chennai-19

2 The Commercial Tax
Officer(FAC) Group-IV CEW-I Enforcement-I
Chennai-600 006

3 The Joint Commissioner(CT)
Enforcement-I Chennai-600 006

+1 CC to M/s. P. Rajkumar, Advocate, SR. 46939
+1 CC to M/s. Spl. Govt., Pleader (Taxes) SR. 47048

W.P.No.24053 of 2016

RP (CO)
MD : 07/09/2016