IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No23836/2013 & MP.No.1/2013

M/s.Don Construction Chemicals
India Ltd., rep.by its Manager,
Finance K.Dattathreya, Plot No.1388
I-Block, 10th Street, 18th Main Road
Anna Nagar [West], Chennai-40. .. Petitioner

Vs.

The Assistant Commissioner [CT]
Adyar I Assessment Circle
Chennai-28. .. Respondent

Prayers: Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records on the file of the respondent in CST/842072/2008-09 dated 24.07.2013and quash the same as illegal, invalid and without authority of law and also violated the principles of natural justice.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.Manoharan Sundaram, AGP[Taxes]

ORDER

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with their consent, these Writ Petitions are taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956. In the writ petition, the petitioner has challenged an order of assessment under the provisions of the CST Act for the assessment years 2008-2009. For the assessment year, the petitioner was issued with a notice by the respondent proposing to revise the turnover under the CST Act. In the notices dated 06.11.2012 and 30.11.2012, they have effected sales to SEZ to the extent of Rs.24,59,739/- over which the petitioner had claimed exemption by filing supporting documents in Form I and the same were accepted by the respondent who has proposed to allow the turnover for exemption. However, by referring to a report of the Inspecting Officers who noticed that the petitioner has effected sales to SEZ units to a tune of Rs.64,24,114/- and not reported a turnover of Rs.39,64,375/- and proposed to assess the related turnover at the appropriate rate.

3.The petitioner submitted their objections on 24.02.2013 contending that they have effected sales to SEZ and furnished Form I for the value of Rs.24,59,739/- and for the balance of Rs.39,64,375/- they have not reported to the Inspecting Officers and they would like to state that the balance sales are to SEZ units in the State of Tamil Nadu. Therefore, the petitioner requested the respondent to consider the sale under the TNVAT Act. After the receipt of the objections, the respondent completed the assessment and passed the impugned orders in which he disallowed the sales to SEZ units to the tune of Rs.24,59,739/-for which, there is no proposal and in fact, the proposal was to allow exemption. Therefore, to that extent, the impugned orders are erroneous.

4.Further, the learned counsel for the petitioner pointed out that the respondent was under the misconception that the petitioner had claimed the sale as a zero rated sale whereas the petitioner's case is that it is an exempted sale in terms of Section 8(6) of the CST Act. However, this aspect of the matter was not clearly pointed out by the petitioner nor any documents produced to establish that their claim is for exemption and not as a zero rated transaction. In the light of the inherent defects pointed out in the impugned order, the same requires to be set aside.

5.Accordingly, the Writ Petition is allowed and the impugned order is quashed. The matter is remanded to the respondent for fresh consideration and the petitioner is directed to file additional objections for the assessment year 2008-2009 and after affording an opportunity of personal hearing to the petitioner, the respondent is directed to complete the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner [CT]
Adyar I Assessment Circle
Chennai-28.

+1 cc to Special Government Pleader(Taxes)Sr.38949

W.P.No.23836 of 2013

CA(CO)
RVR 05/08/2016