IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.24987 of 2016
and
W.M.P.No.21346 of 2016

M/s.Amsak Cranes Pvt. Ltd.,
Rep by its Managing Director
No.68, Varadarajapuram, Nazrathpet,
Poonamallee
Chennai - 600 056. .. Petitioner

..Vs..

Assistant Commissioner (CT)/(FAC)
J.J. Nagar, Assessment Circle
38 & 39, J.J.Complex, 1st Floor,
Thirumangalam, Chennai - 600 040. .. Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33541345621/2013-14 dated 30.10.2015 and quash this order as illegal and direct the respondent to pass fresh orders by considering the representations of the petitioner dated 12.10.2015 and to revise the assessment proceedings for the year 2013-14 under TNVAT Act after providing an opportunity of personal hearing.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.Manokaran Sundaram, A.G.P.,

ORDER

Heard Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with the consent of either side, the writ petition itself is taken up for disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act) and under the Central Sales Tax Act, 1956 (CST Act) on the file of the respondent. In this writ petition, the order of assessment for the year 2013-14 is under challenge.

3.The learned counsel appearing for the petitioner submitted that the only ground on which the petitioner challenges the impugned proceedings is on the ground that an opportunity of personal hearing was not granted. Pointing out to the reply given by the petitioner to the pre-revision notice, it is submitted that the petitioner had specifically stated in the reply/objection that if their reply is not sufficient, personal hearing may be granted to furnish other documents and explanation required in this regard.

4.The respondent while completing the assessment took note of five defects. So far as, the defect no.1 & 2 is concerned, the respondent had over ruled the objections given by the dealer. Similar is the finding in respect of defect nos.3, 4 & 5. But the reason for over ruling is because the petitioner did not produce the necessary documents to prove their stand. Therefore, the petitioner filed an application under Section 84 of the TNVAT Act and requested for rectification.

5.The learned counsel for the petitioner referred to the circular issued by the Principal Secretary/Commissioner of Commercial Taxes dated 03.03.2014 and submitted that the revision of assessment should not have been made without affording an opportunity to the dealer.

6.After considering the submissions made by the parties and perusing the materials placed on record, this Court is of the view that the following order would meet the ends of justice.

(i) So far as the order passed by the Assessing Officer relating to the defect no.1 is concerned, the said defect being factual and cannot be agitated in a writ petition, the petitioner has to necessarily avail the appellate remedy as against the defect no.1. Therefore, the petitioner is granted thirty days time to file an appeal and if the same is filed within the said time, the appellate authority shall entertain the appeal without reference to limitation.

(ii) So far as the defect Nos.2, 3, 4 & 5 is concerned, the Assessing Officer has rejected the petitioners objections as they have not produced the documents and for this reason, the petitioner has filed an application under Section 84 of the TNVAT Act and has produced certain documents and furnished certain details. Therefore, with regard to defect Nos.2, 3, 4 & 5, there will be a direction to the respondent to consider the petitioner's application under Section 84 of the TNVAT Act, afford an opportunity of personal hearing to the petitioner, to enable them to produce the documents and pass orders on merits and in accordance with law.

7.The writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

pgp 26.07.2016

This Petition having been posted on this day "For Being Mention" in pursuance to the order of this Court dated 26/7/2016 and made herein in the presence of the aforesaid advocate, this Court made the following order;

This matter is listed today under the caption "For Being Mentioned", at the instance of the learned counsel appearing for the petitioner.

2. It is submitted by the learned counsel appearing for the petitioner that, though the 0 Writ Petition was disposed of, issuing direction to the respondent, this Court has not issued any direction to defreeze the Bank account by lifting the attachment.

3. In the light of the orders passed by this Court in the Writ Petition, dated 26.07.2016, there will be a direction to the respondent to defreeze the petitioner's Bank account, which has been attached, subject to the fresh orders to be passed by him, in terms of the direction issued in the Writ Petition. Except for the above modification, the order passed in the Writ Petition shall stand as such.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sd
To

Assistant Commissioner (CT)/(FAC)
J.J. Nagar, Assessment Circle
38 & 39, J.J.Complex, 1st Floor,
Thirumangalam, Chennai - 600 040.

+2cc to M/S.C.Bakthasiramoni, Advocate Sr.42247 & 44763
+1cc to the Special Government Pleader Sr.42257

W.P.No.24987 of 2016
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srg 24/08/2016