IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13972 of 2012 & 17186 OF 2013 &
M.P.Nos.1 of 2012 and 1 of 2013

M/s South India Surgical Company Limited.
Rep. by its Director Vivek Bajaj
.. Petitioner in both W.Ps.

vs.

The Assistant Commissioner (CT)
Chintadripet Assessment Circle
No.62, Cathedral Road
Chennai 600 086.
.. Respondent in both W.Ps

PRAYER IN W.P.No.13972 OF 2012

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records on the file of the respondent in CST 34683/2008-09 dated 30.03.2012 and quash the same as illegal, against the principles of natural justice and fair play.

PRAYER IN W.P.No.17186 OF 2013

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records on the file of the respondent in TIN/33340580207/2008-09, CST 34683/2008-09 dated 14.05.2013, and quash the same as illegal, against the principles of natural justice and fair play and stay order passed in M.P.No.1 of 2012 in W.P.No.13972 of 2012.

For Petitioner : Mr.Prithivi Chopda for
Mr.T.Pramod Kumar Chopda

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N   O R D E R

Heard Mr.Prithivi Chopda, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent. Since the petitioner in both the Writ Petitions are one and same and the issue involved relates to the assessment for the year 2008-09, both the Writ Petitions were heard together.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TN VAT Act] and also under the provisions of Central Sales Tax Act, 1956 [CST Act]. In W.P.No.13972 of 2012, the petitioner has challenged the assessment order under CST Act for the assessment year 2008-09. The first ground of challenge is that the impugned order has been passed in violation of principles of natural justice, since even before the expiry of the time limit for submitting the objections, the impugned assessment order has been passed.

3.To demonstrate the same, the learned counsel for the petitioner referred to the pre-assessment notice dated 19.03.2012, in which the petitioner was granted seven days time to submit their objections, which was received by the petitioner on 24.03.2012. This has been specifically stated by the petitioner in the affidavit filed in support of the Writ Petition.

4.In the absence of counter affidavit filed by the respondent, this Court is inclined to accept the stand of the petitioner as correct. If that is so, the petitioner is entitled to submit their objections on or before 02.04.2012, as that being the first working day as 01.04.2012, is Sunday. The petitioner submitted their objections on 2.4.2012, which was acknowledged by the Office of the respondent in their 'Letter Delivery Book', copy of which has been filed in page No.18 of the typed set of papers. The petitioner along with objections dated 28.3.2012, had enclosed 45 Nos. of F- Form for the value of Rs.10,33,54,277/-.

5.It is submitted by the learned counsel for the petitioner that the impugned assessment is anti-dated, this could be clearly found out by the fact that in the pre-assessment notice, the respondent proposed to deny the benefit relating to Stock Transfer to the tune of Rs.16,39,56,812/-. The petitioner having given F-Forms to the value of Rs.10,33,54,277/-, the same has been given credit to and while finalising the assessment, disallowed stock transfer, for want of Form-F to the tune of is Rs.60,06,02,535/-. Thus, on the date when the assessment was completed, the respondent was in possession of 45 F-Forms. That is why he has given credit to the same for the value of Rs.10,33,54,277/- and the balance amount has been shown as disallowed on the ground of want of F-Forms. If that be the case, the respondent could have afforded an opportunity to the petitioner to produce F-Forms for the remaining amount as the petitioner sought for one month time to submit the remaining forms. Thus, it is clearly seen that the impugned assessment order has been passed in violation of the principles of natural justice and this Court can also infer that the impugned assessment order came to be passed only after receipt of objections along with F-Forms received by the assessing officer. On the above ground the impugned order is liable to be set aside.

6.When this Writ Petition was admitted on 30.05.2012, an interim order of stay was granted. Inspite of the same, the respondent reversed the Input Tax Credit with regard to the Stock Transfer to the tune of Rs.6,06,02,535 and passed the order dated 14.05.2013. The said order has been challenged in W.P.No. 17186 of 2013 and an order of stay was granted. In the light of the fact that the assessment itself is held to be unsustainable, consequential proceedings dated 14.05.2013, also deserves to be set aside.

7.Accordingly, both the Writ Petitions are allowed, the impugned orders are quashed and the matter is sent back to the respondent to redo the assessment and the petitioner is granted four weeks time to submit balance F-Forms along with their objections and thereafter, the respondent shall redo the assessment, after affording an opportunity of personal hearing. No Costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa

To

The Assistant Commissioner (CT)
Chintadripet Assessment Circle
No.62, Cathedral Road
Chennai 600 086.

+1 cc to the Special Government Pleader taxes sr45959
+1 cc to Mr.T.Pramod kumar Chopda Advocate sr 45624

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