IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25566 of 2016 &
W.M.P.No.21935 of 2016

M/s.Hevea Furniture and Interiors (P) Ltd.,
Represented by its Director,
No.51-A, Iyam Perumal Street,
Royapettah,
Chennai-600 014. .. Petitioner

Versus

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
Chennai. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in CST/791475/2014-15, dated 13.05.2016 and the consequential order in CST/791475/2014-2015, dated 30.06.2016 and quash the impugned orders as passed contrary to the provisions of the TNVAT Act and further direct the respondent to pass a fresh assessment order for the assessment year CST 2014-2015 on merits after considering the objections dated 30.12.2016 and the documents filed by the petitioner and in accordance with law.

For Petitioner : Mr.P.Rajkumar

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

O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of respondent. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for final disposal.

2. The petitioner-Company, which is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as the "TNVAT Act") and Central Sales Tax Act, 1956 (hereinafter referred to as the "CST Act"), has filed this Writ Petition, challenging the order of Assessment dated 13.05.2016, under the CST Act for the assessment year 2014-2015 and the order rejecting the petitioner's Application for Rectification filed under Section 84 of the TNVAT Act, dated 30.06.2016.

3. The petitioner is a manufacturer of furniture and for the Assessment year 2014-2015, under the CST Act, while raising invoice to a customer, by oversight raised excess charges for the product. Since the charges have been wrongly raised in excess over and above the actual value of the product, the petitioner had supplied a credit note on 29.11.2014, on their customer and the customer had also issued 'C' form only for the actual value of the product supplied by the petitioner. However, this aspect could not be mentioned in the Return, because, there is no relevant columns in the Return Form.

4. The respondent issued a notice dated 09.12.2015 to the petitioner, wherein it was stated that the Monthly Return filed by the petitioner for the assessment year 2014-2015 under the CST Act was to be finalized as follows:-

"

Interstate sales against 'C' forms @ 2%	16246534.00
Taxable turnover reported	16246534.00
Add Exemption claimed	
Deemed Export	100900.00
Sales Return	292945.00
Total turnover reported under CST Act, 1956	16640379.00

"

5. Three issues were pointed out in the notice viz., (1) Inter-state Sales against 'C' forms, (2) Exemption claimed on deemed export and (3) Exemption claimed on Sales Return. The Assessing Officer proposed to reverse the input tax credit on the first issue, as the petitioner had not filed 'C' Form. So far as the Claim for Exemption on Deemed Export and Exemption claimed on Sales Return, the respondent proposed to deny the same, as the petitioner did not file any supporting documents.

6. The petitioner submitted their objection on 30.12.2015 and enclosed the 'C' Form. With regard to the Sales Return, they pointed out that the turnover of Rs.2,92,945/- is actually not a claim of sales return by them, and they sought to explain the transaction as stated above. The petitioner while submitting 'C' forms for the value of Rs.1,50,96,924/-, requested 30 days time for furnishing 'C' forms for the balance value and form 'H'.

7. Surprisingly, in the impugned Assessment Order dated 13.05.2016, the respondent has neither referred to the show-cause notice nor referred to the petitioner's reply and by a cryptic order has finalized the Assessment. The fact that the respondent has received the objection is evident, since the respondent has given credit with regard to the 'C' forms produced by the petitioner and levied tax at 2%. Therefore, the respondent ought to have passed a speaking order after affording an opportunity of personal hearing should have finalized the Assessment. As the petitioner sought for 30 days time to submit 'C' forms for the balance value and Form ' H', that could have been granted. However, when those three issues were pointed out in the petition for Revision under Section 84 of TNVAT Act, the same was also rejected by a cryptic order dated 30.06.2016. Thus, both the order of Assessment as well as the order of petition filed under Section 84 of the TNVAT Act, being non-speaking orders, are liable to be set-aside.

8. Accordingly, the Writ Petition is allowed and the impugned order is quashed and the matter is remanded to the respondent for fresh consideration. The respondent shall after affording an opportunity of personal hearing, to re-do the assessment in accordance with law, by passing a reasoned order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
Chennai.

+1cc to the Special Government Pleader Sr.41917
+1cc to Mr.P.Rajkumar, Advocate Sr.41601

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srg 05/08/2016