IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27139 of 2016
and W.M.P.No.23310 of 2016

M/s.Shree Ganesh Steel Rolling Mills Ltd.,
Rep. by its Director Mr.Abdul Rahman,
No.14-A, Ennore High Road,
Thiruvottiyur,
Chennai - 600 019. ... Petitioner

vs.

1.The Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
791, T.H.Road,
Thiruvottiyur, Chennai - 600 019.

2.The Commercial Tax Officer,
Group-IV, CEW-1, Enforcement-1,
Greams Road,
Chennai - 600 006. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records on the file of the first respondent in proceedings in TIN.No.33911100056/2010-11 dated 27.06.2016 and quash the same being illegal, invalid and against the law and also law laid down by this Court.

For Petitioner : Mr.D.Vijayakumar

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



O R D E R

Heard Mr.D.Vijayakumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents and with their consent, the writ petition is taken up for disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act). In this writ petition, the petitioner has challenged an order of assessment under the TNVAT Act dated 27.06.2016 for the assessment year 2010-2011. On a prima facie reading of the impugned order, it is seen that the impugned order is a reasoned order and the Assessing Officer has considered the objection in a proper perspective. In fact prior to completing the assessment, the Assessing Officer has given sufficient opportunity to the petitioner and he has directed the petitioner to produce necessary records to prove the movement of goods from the seller by the seller's place to their place, necessary records to prove the delivery of goods by the seller, freight payment details and consideration payment details to the seller. While completing the assessment, Assessing Officer has specifically recorded that the petitioner has produced only the purchase invoices, thereby they discharged the initial burden of proof and proof for transfer or delivery of goods in the actual movement of goods has to be proved by way of lorry receipt, delivery note freight charges payments details or by other relevant records for the delivery of goods. In the absence of any proof, the Assessing Officer has directed reversal of ITC to the extent indicated in the impugned assessment order.

3.The learned counsel appearing for the petitioner referred to the objections filed by them to the pre-assessment notice dated 18.12.2014 and referred to the last paragraph of the objection and stated that all the records have been produced. On a perusal of the said objection, it is seen that the petitioner has not produced the document which the first respondent had called for to prove the movement of goods so as to establish the genuineness of the transaction.

4.Faced with such a situation, the learned counsel appearing for the petitioner submits that one more opportunity may be granted to the petitioner to produce the document since the petitioner has all the documents to prove the genuineness of the transaction. However, for that reason, this Court is not inclined to set aside the impugned assessment order. But to afford an opportunity to the petitioner to produce the document to establish the genuineness of the transaction since the Assessing Officer has held that the petitioner has discharged only the initial burden of proof, there will be a direction to the petitioner to file a petition under Section 84 of the TNVAT Act and produce all the documents as called for to prove the movement of goods and if the documents are produced, then the first respondent shall consider the same on merits and in accordance with law and pass appropriate orders. The petitioner is directed to appear before the Assessing Officer along with a petition under Section 84 of the TNVAT Act enclosing the copy of this order and also the documents to prove the actual movement of goods within a period of two weeks from the date of receipt of a copy of this order.

5.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cse

To

1.The Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
791, T.H.Road,
Thiruvottiyur, Chennai - 600 019.

2.The Commercial Tax Officer,
Group-IV, CEW-1, Enforcement-1,
Greams Road,
Chennai - 600 006.

+1 cc to Mr.D.Vijayakumar Advocate sr 44237

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