IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.2920 of 2016
and
W.M.P.No.2433 of 2016

M/s.Indo Tech Transformers Ltd.,
Rep.by its Chief Financial Officer,
Dhiraj Narula,
D.P.36, SIDCO Industrial Estate,
Poonamallee, Chennai - 602 107. ... Petitioner

Vs.

1. The Appellate Deputy Commissioner [CT]
   Chennai [South],
   3rd Floor, PAPJM Building Annex,
   No.1, Greams Road,
   Chennai - 600 006.

2. The Assistant Commissioner [CT],
   Sriperumpudur Assessment Circle,
   Varadarajapuram,
   Poonamallee, Chennai - 602 103.

3. The Assistant Commissioner [CT],
   Tiruvallur Assessment Circle,
   Tiruvallur. ... Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus,calling for the records of the second respondent in CST No.639693/2010-2011 dated 03.10.2013 and the consequential proceedings of the first respondent in A.P.No.23/2015/CST dated 13.10.2015 and quash the same as illegal, arbitrary and against the provisions of the Act and consequently, direct the third respondent to accept the documents in support of the export sales and the interstate sales and grant exemption and concessional rate of tax.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader[Taxes]

O R D E R

By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

2. This Writ Petition is filed challenging the order of the second respondent in CST No.639693/2010-2011 dated 03.10.2013 and the consequential proceedings of the first Respondent in A.P.No.23/2015/CST dated 13.10.2015 and direct the third respondent to grant exemption by accepting the statutory forms.

3.The petitioner is a manufacturer of Transformers and Assessee on the files of the third respondent under the TNVAT Act and CST Act and effected sales within the State as well as outside the State. During the year 2010-2011, the petitioner had effected Inter State Sales and direct export sales.

4.It is the case of the petitioner that the petitioner is entitled for concessional rate of taxes of 2% on production of C-Forms. Since the other state dealers had not furnished the C-Form declaration in time, the same was not able to be produced before the second respondent for finalising the assessment. Further, the petitioner was also not in a position to produce the export related documents so as to claim exemption in respect of the assessment year. On the failure of the petitioner to produce the required documents, the second respondent proceeded to assess the turn over at 14.5% as well as 5% and passed the order of assessment in CST No.639693 for the assessment year 2010-11 dated 03.10.2013. After such an order of assessment, the petitioner was able to collect necessary C-Forms and other export documents and hence, the petitioner approached the third respondent with the available C-Forms and sought for revising the assessment order u/s.84 of TNVAT Act since production of C-Form is permitted even after passing the order of assessment. Further, the petitioner was under the bonafide belief that once a revised order has been passed, an appeal could be filed before the appellate authority in respect of the remaining C- Forms. Hence, he sought for rectification of the order earlier passed and accordingly, the order impugned came to be passed invoking Section 84 of the TNVAT Act. Since the documents were not available with the petitioner, the petitioner was not able to challenge the said order in time and the appeal filed was rejected by the Appellate Authority in A.P.No.23/2015/CST dated 13.10.2015 on the ground that the appeal was filed belatedly. Hence, the petitioner is before this Court.

5.According to the learned counsel for the petitioner, the rectified order has been challenged well within the time limit, but the Appellate Authority erroneously rejected the same. Now, the learned counsel for the petitioner submitted that without considering the reasonable cause and submissions raised in the appeal, the first respondent, dismissed the appeal on 13.10.2015 stating the reason of delay and hence he has no jurisdiction to entertain the appeal.

6.The learned counsel for the petitioner would further submit that the impugned ex parte assessment order passed by the second respondent is ex facie illegal, erroneous in law and violative of principles of natural justice, since the same has been passed without granting sufficient time. Hence, he pleaded that the same is liable to be quashed.

7.The learned Additional Government Pleader [Taxes] submitted that the orders came to be passed only after issuing notice, sufficient time was also given and the petitioner did not utilise the same by production of 'C' forms so as to get concessional levy. Hence, he sought to sustain the assessment order.

8.Heard the submissions of Mr.K.Soundararajan, learned counsel appearing for the petitioner, Mr.S.Kanmani Annamalai, learned Additional Government Pleader [Taxes] who accepts notice on behalf of the respondents.

9.The petitioner herein challenged the assessment order dated 03.10.2013 before the first respondent by remitting the mandatory pre-deposit amount, however, stating that the appeal is barred by limitation, the same was rejected. The issue involved in this case is non production of 'C' forms related to interstate sales as well as export documents before the second respondent who passed the assessment order dated 03.10.2013. The specific case of the petitioner is that due to business fluctuations, the 'C' forms and other export documents were not able to be produced before the second respondent and presently the petitioner is having all those documents and only requires an opportunity to place the same before the third respondent who is the present assessing authority. What is sought to be placed are nothing but statutory forms and hence this Court finds it appropriate to provide yet another opportunity to the petitioner.

10.At this juncture, the learned Additional Government Pleader fairly submitted that the third respondent may be directed to issue fresh notice by granting time and on receipt of the same, the petitioner may be directed to submit C- Forms as well as export documents and on receipt of the same, the third respondent may be directed to consider the same and pass appropriate orders within a time frame.

11.In view of the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader [Taxes], this Court is of the view that the impugned order passed by the second respondent dated 03.10.2013 is liable to be set aside and the petitioner must be given an opportunity to produce the 'C' forms.

12.In view of the same, by quashing the impugned order of the second respondent dated 03.10.2013, the matter is remitted back to the third respondent for passing orders afresh. The third respondent is directed to issue fresh notice within a period of two weeks from the date of receipt of a copy of this order and on receipt of such notice, the petitioner is directed to produce 'C' forms ***along with export documents** within a period of two weeks from the date of receipt of such notice and on receipt of the same, the third respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

13.The Writ Petition is disposed of with the above directions. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)
Dated: 1.3.2016

*Amended as per order of
this Court dated 21.3.2016
in W.P.No.2920 of 2016

Sd/
Assistant Registrar
Dated: 1.4.2016

//True Copy//

Sub Assistant Registrar

sri

To

1. The Appellate Deputy Commissioner [CT]
   Chennai [South],
   3rd Floor, PAPJM Building Annex,
   No.1, Greams Road,
   Chennai - 600 006.

2. The Assistant Commissioner [CT],
   Sriperumpudur Assessment Circle,
   Varadarajapuram,
   Poonamallee, Chennai - 602 103.

To be substituted
to the order
already despatched
on 5.3.2016

3. The Assistant Commissioner [CT],
   Tiruvallur Assessment Circle,
   Tiruvallur.

+1cc to the Special Government Pleader(Taxes), S.R.No.5313

+1cc to Mr.K.Soundararajan, Advocate, S.R.No.17891

W.P. No.2920 of 2016
&
W.M.P.No.2433 of 2016

SAI(CO)
CA(04/03/2016)

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