IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.30990 to 30992 of 2016
&
WMP.Nos.26869 to 26871 of 2016

Tvl.Royal Welding Wires Pvt. Ltd.,
rep.by its Managing Director
Mohammed N.Bharmal
...Petitioner in all the Petitions

Vs

The Assistant Commissioner (CT),
Thirukazhukundram Assessment
Circle, Thirukazhukundram,
Chennai-603202.
...Respondent in all the Petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in TIN/33681681746/2010-11, TIN/33681681746/2011-12 and TIN/33681681746/2012-13 respectively, dated 28.3.2016 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. In these writ petitions, the petitioner challenged the orders of assessment under the provisions of the State Act for the years 2010-11, 2011-12 and 2012-13.

2. The challenge to the assessment orders is on several grounds and as the first ground, the petitioner would state that there is a factual error in the impugned orders. To substantiate the said contention, the petitioner referred to the averments set out in the affidavits filed in support of these writ petitions by contending that the representative of the petitioner appeared before the respondent on 8.3.2016 and was allowed a system verification, that from 11.30 AM to 8.30 PM, the verification was made, that since there was a server problem, all the details could not be verified and from whatever that could be verified, it was correlated with their purchase bills and that there was no mismatch.

3. Though many of the particulars could not be verified and copies were sought for with further opportunity to the petitioner to reconcile the allegation of mismatch, in the impugned orders, the respondent stated that the petitioner did not utilize the opportunity of being heard on 8.3.2016 and nor produced any details. Initially, this Court is of the view that the petitioner did not appear. But, there is no denial in the counter affidavit to the averment contained in the affidavits in support of the writ petitions that in fact, the representative of the petitioner attended the office of the respondent on 8.3.2016 and was allowed to verify the alleged mismatch from the computer in the office of the respondent.

4. In the absence of any specific denial in the counter to such an averment contained in the affidavits in support of the writ petitions, when this Court perused the impugned orders, it is seen that the proposal made in the show cause notices dated 22.4.2015/11.5.2015 has been substantially reduced while passing the impugned assessment orders. Even in the impugned orders, the respondent would state that the proposal in the show cause notices has been partly confirmed.

5. If the respondent was convinced that the proposal requires partial confirmation, then it goes without saying that the petitioner had produced certain material or was able to explain to the satisfaction of the Assessing Officer that the allegation of mismatch was not made out.

6. However, the contention of the petitioner is that full particulars were not furnished and that the system failed because of the connectivity problem and other issues. Therefore, the petitioner seeks one more opportunity to go before the Assessing Officer. It is further submitted that interest of the Revenue would not be affected, since it is an admitted fact that the petitioner is entitled to a refund, which the respondent seeks to adjust as against the tax dues.

7. However, for the aforesaid rasons, this Court is not inclined to set aside the impugned orders in entirety, as the petitioner has been granted partial relief in the impugned orders. Therefore, the proper thing for the petitioner is to approach the respondent by way of a rectification petition under Section 84 of the State Act.

8. Accordingly, the writ petitions are disposed of with a direction to the petitioner to file a petition under Section 84 of the State Act within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent shall afford an opportunity of personal hearing, consider the issues pointed out by the petitioner in an effective manner by providing all the details, which were sought for and pass an order in accordance with law, within two weeks thereafter. Till then, no coercive action shall be taken against the petitioner for recovery of tax and penalty as computed in the impugned assessment orders. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS II)



//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Thirukazhukundram Assessment
Circle, Thirukazhukundram,
Chennai-603202.

+3ccs to Mr.S.Raveekumar, Advocate, S.R.No. 64413 to 64415

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NRI (CO)
PSI (05/12/2016)