IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31451 of 2016 &
W.M.P.No.27289 of 2016

M/s.Bentool Steel Products P Ltd.,
27/2, Menambedu Road,
Mannurpet, Chennai-50. .. Petitioner

Versus

1.The State of Tamil Nadu,
Represented by the Secretary to the Government,
Department of Commercial Taxes,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commercial Tax Officer,
Korattur Assessment Circle,
Chennai-50. .. Respondents

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 records of the second respondent in the impugned order in CST/1644/2014-2015, dated 28.07.2016 quash the same as illegal and further direct the second respondent to pass revision order allowing the ITC on interstate sale done to SEZ against Form-1.

For Petitioner : Mr.R.Sridhar

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R.Sridhar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of respondents. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for disposal.

2. The petitioner is a dealer of Alloys, Mild Steel, Carbon Rounds, Steel Sheets, Steel Plates, Steel Pipes, Steel Structural and Copper Flats and has effected sale to a company viz., Sri City SEZ in Andhra Pradesh. The said purchasers have used the same in the production and export of Heavy duty Transformers, Industrial Tanks, Power and Energy Sector Equipment, Tube and Pipe Mill Equipment etc.,

3. The petitioner is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act") and the Central Sales Tax Act, 1956 (in short "CST Act"). For the Assessment year 2014-15, the petitioner declared a total and taxable turnover of Rs.1,51,71,816/- and Rs.27,07,344/- respectively. A VAT Audit was conducted in the business premises of the petitioner, in which, the accounts for the Assessment years 2006-07 to 2014-15 were verified and a report was submitted on 28.05.2015. So far as the Assessment year 2014-15 is concerned, it is stated that the petitioner voluntarily produced the following documents:-

> "(i) Monthly return copy along with Annexures for the year 2014-15
> (ii) Audited Balance Sheet copy and Form WW copy.
> (iii) Purchase bill copies along with statement of payment details.
> (iv) Bank Statement, Bank Statement for VAT and CST payment.
> (v) Form-C and Form-I (12 Numbers) for the year 2014-15 along with From-10 abstract copy.
> (vi) SEZ allotment copy.
> (vii) Copy of the debit / credit notes."

4. The grievance of the petitioner is that the second respondent, viz., the petitioner's Assessing Officer without issuing any notice and inviting any objections from the petitioner has completed the Assessment under the CST Act, for the year 2014-15.

5. It is pointed out by the learned counsel for the petitioner that though in the impugned order it is alleged that a notice was issued to the petitioner on 31.07.2015 and that the petitioner had filed a reply dated 29.03.2016, that does not pertain to the Assessment year 2014-15, but it pertains to the earlier Assessment year, viz., 2013-14. Therefore, it is submitted that the impugned order is in total violation of the principles of natural justice. In this regard, the learned counsel for the petitioner, placed a reliance on the decision of this Court in the case of Narasus Roller Flour Mills Vs. Commercial Tax Office (Enforcement Wing), Sankagiri and another reported in (2015) 81 VST 560 (Mad). Further, it is submitted that the reversal of ITC as done by the second respondent in the impugned order is erroneous, as the second respondent has ignored Section 18(1)(ii) of TNVAT Act read with Section 8(6) of the CST Act, 1956. It is further submitted that the impugned order is a verbatim repetition of the VAT Audit report and it is an outcome of non application of mind.

6. The learned Government Advocate appearing for the respondents submitted that as against the impugned order, the petitioner has an effective remedy of filing an Appeal before the Deputy Commissioner of Commercial Taxes / South, Chennai and without exhausting such remedy, the petitioner is not entitled to approach this Court by way of filing this Writ Petition.

7. After hearing the learned counsel for the parties and perusing the materials available on record, this Court is inclined to accept the submission of the learned counsel for the petitioner that the impugned order is in violation of principles of natural justice.

8. As pointed out by the petitioner, the notice dated 31.07.2015 did not pertain to the Assessment year 2014-15. Even assuming the second respondent has construed the letter dated 29.03.2016 submitted by the petitioner, as an explanation or a reply, then, the second respondent should have discussed the contentions raised. However, on reading of the impugned order, it is seen that the Assessment has been completed solely, based on the VAT Audit.

9. Time and again, this Court has held that the Assessing Officer is an independent Statutory Authority, who has to complete the Assessment by considering the objections raised by the dealer and he cannot be a mouthpiece of the Enforcement Wing or Audit Party. The report submitted by the Audit can at the best be an information to the Assessing Officer, which may give a cause of action for issuing a pre-revision notice. After issuance of notice, when the dealer submits its objections, there is a statutory duty on the part of the Assessing Officer to consider the objections on all aspects and then, complete the Assessment, by passing a speaking order, after affording an opportunity of personal hearing. If the Assessing Officer fails to do so, it would amount to abdication of statutory duty cast upon the Assessing Officer, which is more than sufficient to set-aside the impugned order.

10. Accordingly, the Writ Petition is allowed and the impugned assessment order is set-aside and the second respondent is directed to issue notice to the petitioner, clearly setting out the allegations and grant 15 days time to the petitioner to submit their objections. On receipt of the objections, the second respondent shall afford an opportunity of personal hearing to the petitioner and redo the Assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to the Government,
Government of Tamil Nadu,
Department of Commercial Taxes,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commercial Tax Officer,
Korattu Assessment Circle,
Chennai-50.

+1 cc to M/s.R.sridhar,advocate,sr.51234

+1 cc to Govt.Pleader,sr.51529.

cnr(co)
krd 26/9

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