IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.3331 of 2016
and
W.M.P.No.2747 of 2016

M/s.Stahl India Pvt. Ltd.,
1-A Sargunar Salai,
Nagalkeni,
Chrompet,
Chennai 600 044.
(Rep by its CFO and
Company Secretary) ... Petitioner

Vs

The Assistant Commissioner (CT)
Pammal Assessment Circle,
Chennai 600 044. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the respondent in the impugned order in C.S.T No.722652/2014-15 dated 08.01.2016 and quash the same as it is against the principles of natural justice; violative of Article 286(1)(b) of the Constitution; and contrary to Section 63 A of the Tamil Nadu Value Added Tax Act 2006 read with Rule 16A of the TN VAT Rules, 2007 read with Section 9 of the CST ACT 1956.

For Petitioner : Mr.K.Vaitheeswaran

For Respondent : Mr.S.Manoharan Sundaram,
Additional Government Pleader(T)

O R D E R

Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes), takes notice for the respondent and with their consent, the main writ petition is taken up for disposal.

2.This writ petition has been filed under Article 226 of the Constitution of India challenging the order of the respondent dated 08.01.2016.

3. It is the case of the petitioner that they are registered dealers engaged in the manufacture of dyes and chemicals. According to the petitioner, for the assessment year 2014-2015, they effected inter-state sales against Form C Declaration, effected stock transfer and exports.

4.The petitioner would state that a pre-assessment notice dated 05.11.2015 was served on them on the ground that they have not filed the declaration Form C and Form F within three months. The petitioner, vide letter dated 28.11.2015, requested the respondent to grant three months time to submit the necessary declaration forms. However, the respondent granted time till 21.12.2015 for filing the declaration forms. Due to non-compliance, again, the petitioner, by letter dated 18.12.2015, requested the respondent to extend the time limit stating that due to the rain, the petitioner's company was badly affected and hence, they were not able to take steps for filling the declaration forms. But, the respondent, without considering the same and without giving an opportunity of personal hearing, passed the impugned order on 08.01.2016. The petitioner would further state that by virtue of Article 286(1)(b) of the Constitution, the goods imported are not liable to be taxed.

5. It is the grievance of the petitioner that though they sought for extension of time by their letter dated 18.12.2015, without granting sufficient time to file the certificates and documents, the impugned order dated 08.01.2016 was issued by the respondent confirming the proposal dated 05.11.2015. Aggrieved over the same, the present writ petition has been filed by the petitioner.

6. The learned counsel for the petitioner would submit that when the assessment was made under Section 22(4) of the Tamil Nadu Value Added Taxes Act read with Section 9(2) of the Central Sales Tax Act, 1956, opportunity of being heard ought to have been provided by the respondent, before passing the impugned order. Hence, there is a violation of principles of natural justice and hence, the impugned order is not sustainable.

7. That apart, according to the learned counsel for the petitioner, Rule 12(7) of the CST (R&T) Rules, provides for filing of declarations even after the period prescribed under the Act and hence the respondent has the jurisdiction to consider the declaration so filed, however, the respondent has not provided such an opportunity and therefore, there is non compliance of the said Rule by the respondent.

8. Be that as it may, the learned counsel for the petitioner would submit that had the petitioner been granted

some more time for production of declarations, the same would have been produced before the respondent and since the details are available and the declarations can be filed at any time, if an opportunity is granted, the petitioner would prove that entire demand of tax as per the impugned orders may not survive. Therefore, the learned counsel for the petitioner has sought for quashing of the impugned order.

9. The learned Additional Government Pleader (Taxes), appearing for the respondent, on the other hand submitted that though sufficient opportunity was given, the petitioner did not produce the C Forms.

10. This Court heard the submissions of Mr.K.Vaitheeswaran, learned counsel appearing for the petitioner and Mr.S.Manoharan learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

11. Considering the submissions made by the learned counsel on either side, since it is submitted that yet another opportunity may be given to the petitioner with respect to the claim of production of declaration forms alone, this Court is inclined to grant sufficient time to the petitioner for production of C forms.

12. In view of the above, by quashing the impugned order dated 08.01.2016, this Court permits the petitioner to file C declaration forms before the respondent within a period of two weeks from the date of receipt of a copy of this order and on such production, the respondent is directed to consider the same and pass orders on merits and in accordance with law, within a period of four weeks thereafter.

13. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cla

To

The Assistant Commissioner (CT)
Pammal Assessment Circle,
Chennai 600 044.

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.6146
+1cc to the Special Government Pleader(Taxes), S.R.No.6227

W.P.No.3331 of 2016

CTK(CO)
CA(02/03/2016)