IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35831 of 2016

and

W.M.P.No.30774 of 2016

M/s.Bokaria Reinforcing Company P.Ltd.,
rep.by its Director P.Prakash Bokaria
No.189/6, Eurlipattu Village,
Ponneri Taluk,
PIN:600 067 .. Petitioner

..Vs..

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

2.The Commercial Tax Officer,
Ponneri Assessment Circle,
No.22, Cutchery Road,
Ponneri-601 204 .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified Mandamus calling for the records on the file of the second respondent in TIN:33921700917/2014-15, dated 31.08.2016 and quash the same and further direct the second respondent not to apply Section 2(1) of the Tamil Nadu Value Added Tax(Fifth Amendment) Act, 2013 (Act 28 of 2013), in as much as the petitioner being a manufacturer of goods in the State of Tamil Nadu.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondents : Mr.K.Venkatesh,G.A.

ORDER

Heard Mr.T.Pramodkumar Chopda, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondents. By consent, the writ petition is taken up for final disposal.

2.In this writ petition, the petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956, has challenged the order of assessment dated 31.08.2016 for the year 2014-15 under the TNVAT Act.

3. On a perusal of the impugned order it is seen that the petitioner did not file their objection to the revision notice issued by the respondent. Therefore, the respondent cannot be faulted for having completed the assessment ex-parte. However, the learned counsel for the petitioner would contend that the petitioner has got an excellent case on merits. He would submit that proviso to Section 19(2) of the TNVAT Act will apply only to cases falling under Section 19(2)(v) of the TNVAT Act ad therefore, the said proviso will apply only when local tax suffered goods are purchased for the purpose of sale under Section 8(1) of the CST Act, 1956. Apart from that, the learned counsel also raised various other contentions and submits that one more opportunity may be granted to the petitioner to go before the assessing officer.

4. Considering the fact that the assessment has been completed ex-parte, this Court is inclined to grant an opportunity to the petitioner to go back before the assessing officer, subject to certain conditions.

5. Accordingly, there will be a direction to the petitioner to pay 15% of the disputed tax within three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, within the time prescribed, then they are permitted to treat the impugned proceedings as a show cause notice, submit their objections within a period of 15 days therefrom, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. In the event, the petitioner fails to comply with the above condition, the benefit of this order will not enure to them and the writ petition shall stand automatically dismissed, leaving it open to the petitioner to work out their remedies under the provisions of the TNVAT Act/CST Act. In the event of compliance of the conditional order, the respondent shall not initiate any coercive action for recovery of the balance tax.

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

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar6

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To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai-600 009

2.The Commercial Tax Officer,
Ponneri Assessment Circle,
No.22, Cutchery Road,
Ponneri-601 204

+1 CC to Mr.T.Pramodkumar Chopda, Advocate Sr.No.57824

+1 CC to Special Government Pleader, High Court, Chennai. Sr.No.58142.

W.P.No.35831 of 2016

RP(CO)
KP(12.11.2016)

07.10.2016