IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.36493 of 2016
and
WMP Nos.31403 and 31404 of 2016

Tarajyot Polymers Limited,
represented by its Branch Manager,
Mr.Pradeep Kumar Ajitsaria,
No.1, Devi Nagar,
Moolachatram Main Road,
Madhavaram Milk Colony,
Chennai – 600 051. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Manali Assessment Circle,
5/79, 5th Main Road,
Kaviarasu Kannadasan Nagar,
Kodungaiyur,
Chennai 600 118.

2.Tamil Nadu Mercantile Bank Ltd.,
45, Pulla Avenue, Shenoy Nagar,
Tuticorin Branch. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the first respondent herein in CST No.1210933/2014-15, dated 13.7.2016 rectifying the earlier proceeding in CST No.1210933/2014-15, dated 07.01.2016, quashing the same insofar as it relates to the disallowance of exemption on a turnover of Rs.7,18,29,120/-, being high sea sales effected by the petitioners falling under Section 5 (2) of the Central Sales Tax, 1956.

For Petitioners : Mr.N.Prasad
for M/s.N.Inbarajan

For 1st respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Mr.K.Venkatesh, learned Government Advocate, takes notice on behalf of the first respondent. By consent of the counsel, the Writ Petition itself is taken up for disposal at the admission stage.

2. The petitioner is a Limited Company incorporated under the Companies Act. The petitioner company has its Registered Office at Kolkata, West Bengal State and it has Branch Offices at Chennai and Tuticorin, holding TIN No.33931089278. The petitioner company also has its Branch at Bangalore. The business of the petitioner company consists of import of plastic granules and effect stock transfer and inster-state sales of the same. Accordingly, in respect of the assessment year CST/2014-15, the petitioner reported their turnover as under:-

Sl.No.	Head	Turnover declared for annually (Rs.)
1	Consignment Sale	126,22,52,675/-
2	Stock Transfer	8,57,12,061/-
3	Interstate Sales against Form C	2,51,72,790/-
4	High Seas Sales	7,18,29,120/-

3. According to the petitioner company, they submitted Form F Declaration on stock transfer to their Branch and consignment agent for a value of Rs.33,67,16,175/-. This was in respect of the fourth quarter covering the period between January 2015 to March 2015. On the same date, Form F Declaration for a value of Rs.40,65,32,625/- was submitted for the second quarter and Form F for a value of Rs.60,46,76,228/- was submitted for the third quarter. While so, the first respondent issued a notice dated 14.10.2015. That notice proposed to disallow the sales to registered dealers under Section 8(1) of the CST Act, being a turnover of Rs.2,51,72,790/-, which was termed as "consignment movement – details from web-site". On 24.10.2015, the petitioners submitted C Declaration forms for a value of Rs.2,46,48,087/-. This was duly acknowledged by the first respondent. O7.1.2016, the first respondent passed an order assessing the turnover of Rs.2,51,72,790/- at 5% after disallowing concessional rate. The stock transfer value was assessed for Rs.8,57,12,061/- as not covered by proof. The first respondent also assessed the turnover of Rs.126,03,00,110/- as consignment sales not covered by F Form. The first respondent assessed the turnover of Rs.26,79,63,565/- at 5%. On 9.3.2016, the petitioner company

submitted C Declaration Forms for a value of Rs.10,28,160/- and Rs.39,078/-, which have been acknowledged by the first respondent. On 2.5.2016, there was an order with reference to the Notice dated 14.3.2016. This order confirmed demand on the value of Rs.2,51,72,790/- as not covered by "C" Forms. In reply, on 22.6.2016, the petitioner company filed an application stating that C Form declarations had already been submitted for the value of Rs.2,51,72,790/-. Thereafter, the first respondent has passed the impugned order dated 13.7.2016. This refers to the order dated 7.1.2016 and representation dated 21.1.2016 and rectified order dated 7.1.2016. The impugned order dated 13.7.2016, thereafter, levies a tax on the high sea sales turnover of Rs.7,18,29,120/-. For the demand of this turnover, there is no notice. Thereafter, the petitioner company has submitted the High Sea Sales Documents through Application dated 22.9.2016 in which they have brought to the notice of the first respondent that there was no show cause notice to levy tax on the turnover of Rs.7,18,29,120/-. There was no response from the first respondent. Aggrieved by the impugned order of the first respondent, the present Writ Petition has been filed by the petitioner company.

4. After some elaborate arguments by both the parties, the learned counsel for the petitioner submitted that since the petitioner had submitted Audit Report as per Rule 16.A for the high sea sales, the first respondent might have considered the same and if the first respondent was not inclined to accept the audit report, as contemplated under Section 22 (4) of TNVAT Act, the petitioner should have been given an opportunity of personal hearing. Neither notice has been issued nor opportunity of personal hearing was afforded to the petitioner. Therefore, there is violation of principles of natural justice in passing the impugned order. In view of the same, the order is liable to be set aside and the matter is liable to be remitted back to the authority concerned. In support of his contention, the learned counsel for the petitioner relied on the decision in SRC Projects Pvt.Ltd., vs. Commissioner of Commercial Taxes, Chennai and another reported in [2010] 33 VST 333 (Mad) rendered by a Division Bench of this Court.

5. The learned Government Advocate appearing for the first respondent has contended that though opportunity has already been afforded, yet they will offer an opportunity of personal hearing to the petitioner and proceed in accordance with law. However, attachment made in the bank account cannot be raised now, for which, the learned counsel for the petitioner has not seriously objected to it.

6. In SRC Projects Pvt.Ltd., vs. Commissioner of Commercial Taxes, Chennai and another reported in [2010] 33 VST 333 (Mad), relied on by the learned counsel for the petitioner,

the Division Bench of this Court has held that -

> "22. This Court, therefore, holds that the provision of section 16(1)(a) of the said Act has to be construed in accordance with the said circular which is by way of contemporanea expositio. So when a specific demand is made for personal hearing, the reasonable opportunity of showing cause should include the same in the interest of fairness in procedure."

A reading of the above paragraph shows that wherever there is demand for an opportunity of personal hearing, it must be afforded before passing an adverse order by the authority concerned.

7. In this case, the main grievance of the petitioner is that he was not afforded personal hearing before passing the impugned order inspite of his request insofar as relating to the the disallowance of exemption on high sea sales turnover of Rs.7,18,29,120/-.

8. In the light of the aforesaid decision, since the Department is safeguarded by the attachment made in the bank account, I am inclined to set aside the impugned order dated 13.7.2016 insofar as it relates to the disallowance of exemption on high sea sales turnover of Rs.7,18,29,120/-, and remit the matter back to the authority concerned for affording an opportunity of personal hearing to the petitioner in respect of disallowance of exemption on high sea sales turnover of Rs.7,18,29,120/-, and to proceed in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ Petition is disposed of. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

asvm

copy to:

1.The Commercial Tax Officer,
Manali Assessment Circle,
5/79, 5th Main Road,
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Kodungaiyur,
Chennai 600 118.

2.Tamil Nadu Mercantile Bank Ltd.,
45, Pulla Avenue, Shenoy Nagar,
Tuticorin Branch.

1 cc to M/s.N. Inbarajan Advocate, Sr. 58927
1 cc to M/s. Spl.government Pleader, Sr. 59060

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