the High Court of Judicature at Madras

Dated : 24.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.40984 of 2016 and WMP.No.34975 of 2016

Marthon Electric India Pvt. Ltd.,
rep.by its Deputy General Manager
Mr.K.Senthil ...Petitioner

Vs

1.The Assistant Commissioner (CT),
Saligramam Assessment Circle,
Ashok Nagar, Chennai-83.

2.The Assistant Commissioner (CT),
K.K.Nagar Assessment Circle,
West Mambalam, Chennai-83. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in TIN.33511423189/2012-13 dated 28.3.2014 and consequential recovery notice dated 02.11.2016 issued by the 2nd respondent, quash the same and further direct the 2nd respondent to consider the rectification petition filed on 17.2.2015 in support of their claim of concessional levy.

For Petitioner : Mr.P.V.Ravikumar
For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a private limited company having registered office at Faridabad, Haryana and a branch office at Chennai. The petitioner is an assessee registered on the file of the second respondent under the provisions of the the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. Previously, the petitioner was registered as a dealer on the file of the first respondent. In this writ petition, the petitioner challenges an order of assessment dated 28.3.2014

passed by the first respondent and the recovery notice dated 2.11.2016 issued by the second respondent.

3. The main contention raised by the petitioner is that the impugned order of assessment is in violation of the principles of natural justice, as it has been passed without considering the claim of concessional levy and that the petitioner had not been given a reasonable opportunity to put forth their objections. Only when the petitioner went to the office of the second respondent along with the industrial input certificates, they came to know about the assessment order dated 28.3.2014, which was never communicated to the petitioner. The petitioner applied for the certified copy of the order dated 28.3.2014 and after obtaining the same, the petitioner filed an application under Section 84 of the State Act on 18.7.2016.

4. In the application under Section 84 of the State Act, the petitioner pointed out that if the industrial input certificates are considered, there will be no demand. As on date, the application under Section 84 of the State Act has not yet been disposed of, though it has been received in the office of the second respondent on 18.7.2016 itself, as per the endorsement in the letter delivery book.

5. At this juncture, it would be relevant to point out that based on the decision of the Hon'ble Full Bench of this Court in Arul Murugan & Company [51 STC 381] and the decision of the Hon'ble Supreme Court in the case of VIPRO Foundry Engineers Limited [81 STC 169], the Commissioner of Commercial Taxes issued a circular dated 30.4.1993 as to how the Assessing Officer has to act when declarations in Form E and Form F are produced after the assessment is completed. After referring to the relevant Rules, the Commissioner directed that the Assessing Officer can allow Form C, Form E-I, Form E-II and F Forms, to be filed after completion of assessment on sufficient cause. This was reiterated in another circular dated 30.4.1993, after having found that some of the Assessing Officers have taken a stand that they do not have jurisdiction to accept those forms, after the assessment is over. In fact, in the impugned intimation, such is the stand taken by the respondent Assessing Officer.

6. Thus, in the light of the law laid down by the Hon'ble Full Bench of this Court and the Hon'ble Supreme Court and in view of the instructions given by the Commissioner of Commercial Taxes, the second respondent/ Assessing Officer was not justified in refusing to accept the industrial input certificate, which is essentially a document relied on to claim concessional rate of tax.

7. Since the application filed by the petitioner under Section 84 of the State Act is pending on the file of the second respondent, it is appropriate for the second respondent to consider the same and while doing so, the second should consider the industrial input certificates, which are available with the petitioner and copies of the same have been filed before this Court.

8. In the light of the above, while directing the recovery notice dated 2.11.2016 issued by the second respondent to be kept in abeyance, the second respondent is directed consider the petitioner's application for rectification dated 18.7.2016, afford an opportunity of personal hearing, consider the industrial input certificates, which are produced by the petitioner and thereafter pass a speaking order on merits and in accordance with law. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

9. The writ petition is disposed of with the above directions. No costs. Consequently, the above WMP is closed.

RS

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

1.The Assistant Commissioner (CT),
Saligramam Assessment Circle,
Ashok Nagar, Chennai-83.

2.The Assistant Commissioner (CT),
K.K.Nagar Assessment Circle,
West Mambalam, Chennai-83.

+1cc to Mr.P.V. Ravikumar, Advocate, S.R.No.68733
+1cc to the Government Pleader, S.R.No.68769

ev(CO)
md(25/11/2016)

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