IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.41145 of 2016 &

W.M.P.No.35141 of 2016

Tvl.Luk India Private Ltd.,
Represented by its Manager,
7, New Rayakottai Road,
Hosur. .. Petitioner

Versus

The Assistant Commissioner (CT),
Hosur South,
Hosur. .. Respondent

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 proceedings of the respondent, dated 30.09.2016 in CST No.673876/2015-2016 and quash the same and direct the respondent to grant the petitioner reasonable time to produce the statutory forms required to be submitted for the year 2015-16.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of respondent. 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 in automobile components and registered under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act") on the file of the

respondent. In this Writ Petition, the petitioner challenges an order of assessment, dated 30.09.2016 under the CST Act, for the year 2015-16.

3. The challenge in the impugned order is not on merits, but on the ground that the order has been passed in violation of principles of natural justice. To test the correctness of the submission, this Court perused the documents filed in the typed-set of papers and also heard the learned Additional Government Pleader.

4. It is seen that a notice dated 19.08.2016 was issued to the petitioner proposing to reverse the Input Tax Credit as per Section 19(5)(c) of the Tamil Nadu Value Added Tax Act, 2006. The reason for making such proposal is that the petitioner has not filed the declaration in Form 'C', for a period of three months. The petitioner received the Show-Cause Notice on 06.10.2016. The Show-Cause Notice grants 15 days time to the petitioner to file their objections. However, well before the expiry of 15 days period, the impugned assessment order has been passed on 30.09.2016. It is admitted by the learned Additional Government Pleader that the impugned assessment order has been passed well before the expiry of 15 days period. This is sufficient to set-aside the impugned order.

5. One more ground on which the impugned order has to be held bad is on the ground that impugned order proceeds to reverse the Input Tax Credit, on other grounds as well, other than the ground pointed out in the Show Cause Notice, dated 19.08.2016. Therefore, in respect of those issues which are pointed out in the impugned order, the petitioner did not have adequate opportunity. Thus, the impugned order having been passed in total violation of principles of natural justice, calls for interference.

6. It is seen that even after the impugned order, the petitioner has produced 'C' Forms on 05.10.2016 and 28.10.2016, which have been received by the respondent. However, when the petitioner produced 'C' Forms along with their letters dated 09.11.2016 and 16.11.2016, the respondent appears to have refused to receive the 'C' Forms.

7. The petitioner's further case is that they are having transactions with Big Corporate Companies, such as Mahindra and Mahindra, Ford India etc., and invariably, it takes long time for the said Corporate Organization to furnish Form 'C'. Therefore, it is submitted that as and when the petitioner produces the Form 'C' declarations, the respondent can very well accept the same and as per the provisions of the Statute, three months time is granted. Even thereafter, Courts have held that

if an Application for condonation of delay is filed along with proper reasons, the Assessing Officer can accept the 'C' Forms, even beyond the period of three months. However, in the instant case, because the petitioner did not furnish the 'C' Forms for a period of three months, there was a proposal to reverse the Input Tax Credit.

8. For all the above reasons, the Writ Petition is allowed and the impugned order is set-aside and the respondent is directed to issue fresh Show-Cause Notice to the petitioner, clearly setting out as to what is the proposal being made against the petitioner. Before doing so, the respondent shall accept the 'C' Forms which have been given by the petitioner along with letters dated 05.10.2016 and 28.10.2016 and also accept 'C' Forms which were furnished along with letters dated 09.11.2016 and 16.11.2016. The 'C' forms shall be verified and if found to be in order, appropriate concessional rate of duty should be granted and it is only thereafter, if the respondent finds that there is still a default, a notice can be issued to the petitioner and thereafter, the matter can be proceeded in accordance with law. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s

To
The Assistant Commissioner (CT),
Hosur South,
Hosur.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.68725
+1cc to the Government Pleader, S.R.No.68770

nrjk(CO)
md(23/12/2016)

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