IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.42068 of 2016 &
W.M.P.No.35983 of 2016

M/s.IEC Fab Chem Limited,
Rep. by its Director S.Rajkumar,
K.32-B SIPCOT Industries Complex,
Gummidipoondi,
Tiruvallur District. .. Petitioner

Versus

1.The Commercial Tax Officer,
Koyambedu Assessment Circle,
Koyambedu, Chennai-107.

2.The Commercial Tax Officer,
Gummidipooni Assessment Circle,
38, II Floor, G.N.T.Road,
Gummidipoondi, Tiruvallur District. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the first respondent in his proceedings in CST 651268/2013-14, dated 06.01.2015 and consequential order passed by the second respondent in his proceedings in CST 651268/2013-14, dated 28.04.2016 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of respondents. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for disposal.

2. The petitioner is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as the "TNVAT Act") and Central Sales Tax Act, 1956 (hereinafter referred to as the "CST Act"). Subsequently, they shifted the place of business and their assessment circle has been now shifted to the jurisdiction of the second respondent.

3. The order impugned in this Writ Petition is an order of assessment, dated 06.01.2015 under the provisions of the CST Act for the year 2013-14 passed by the first respondent and a demand dated 28.04.2016 issued by the second respondent. The demand dated 28.04.2016 is a consequence of the impugned assessment order dated, 06.01.2015. The matter relates to production of Form 'C' declaration and export documents, wherein, the petitioner claimed concessional rate of tax and exemption respectively. After the impugned assessment order was passed on 06.01.2015, the petitioner filed a petition under Section 55 of the Act, seeking to revise the order by including the additional 'C' forms. Though 'C' forms have been accepted and given credit to, however, with regard to export sale and transit sale, the second respondent refused to look into the export documents as the same has already been disallowed, while completing the assessment, dated 06.01.2015. Therefore, it has to be seen as to whether the assessment order dated 06.01.2015 has been passed in compliance with the provisions of the Statute and whether the principles of natural justice have been complied with.

4. On a bare perusal of the impugned assessment order, dated 06.01.2015, it shows that the petitioner did not have any opportunity to submit their objections and the impugned assessment order has been passed without even issuing a show-cause notice. This is sufficient to hold that the impugned order has been passed in violation of principles of natural justice. Nevertheless, in respect of the transactions covered by the 'C' forms, the first respondent has given credit to the those 'C' forms and applied the concessional rate of tax. But, however, with regard to the transactions not covered by 'C' forms, the higher rate of tax has been imposed and the export documents were not called for and considered. Therefore, the claim for exemption was totally disallowed.

5. Since this Court has convinced that the impugned assessment order dated 06.01.2015 is in violation of principles of natural justice, the same is required to be set-aside in so far as revised higher rate of tax in respect of transactions not covered by 'C' forms and in respect of dis allowance of the exemption on account of not considering the export documents and transit sale documents. Therefore, to that instant, the impugned order dated 06.01.2015 is quashed. Having held so, the impugned demand, dated 28.04.2016 also required to be set-aside with further directions.

6. At this juncture, it is relevant to point out the Circular issued by the Principal Commissioner, dated 28.02.2011 with regard to acceptance of the statutory forms. The operative portion of the Circular reads as follows:-

> "All the Assessing Officers may be instructed to accept the Form XVIII filed after passing final assessment orders and revise the assessments under Section 55 of the Tamil Nadu General Sales Tax Act, 1959. Form XVII and other Forms should be issued without mentioning any date of validity as in the case of Form 'C' and 'F'.
>
> The Assessing Officers may also instructed to mention in the assessment order itself by a foot note that the dealers may file the missing declaration forms / certificates, as the case may be, and the assessment will be revised under Section 55 of Tamil Nadu General Sales Tax Act, 1959 as and when the Forms like C, D, EI, EII and Form XVII (as the case may be) are filed by the dealers after final assessment."

The above circular issued by the Commissioner binds the assessing officer. Therefore, belated production of Form 'C' declarations cannot be a sole ground to reject the same. That apart, the first respondent while completing the assessment did not consider the export sale documents and the transit sale documents nor those documents were called for, but assessment was completed ex-prate. Therefore, Form 'C' declarations that the petitioner may produce and the export documents and the transit sale documents should be considered by the second respondent.

7. Accordingly, the Writ Petition is allowed and the impugned order order is set-aside and the matter is remanded to the second respondent for fresh consideration, who shall direct the petitioner to appear for personal hearing and permit the petitioner to produce Form 'C' declarations, export documents and transit sale documents etc., and on perusal of those documents and after hearing the petitioner's objections, the assessment shall be redone in accordance with law. No

costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Commercial Tax Officer,
Koyambedu Assessment Circle,
Koyambedu, Chennai-107.

2.The Commercial Tax Officer,
Gummidipooni Assessment Circle,
38, II Floor, G.N.T.Road,
Gummidipoondi, Tiruvallur District.

+1cc to Mr.S.Ramanathan Associates, Advocate, S.R.No.70651
+1cc to the Government Pleader, S.R.No.70622

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RP(CO)
MA(/28/12/2016)