IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.42403/2016 & wMP.No.36289/2016

Madras Engineering Industries
Private Ltd., rep.by its Director
Ms.Priya Sriram, C6, Industrial
Estate, Ambattur, Chennai 600 058. ..Petitioner

Vs

The Assistant Commissioner [CT]
Anna Nagar Assessment Circle, 1B
Lakshmipuram 2nd Street,
Villivakkam, Chennai 600049. ..Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the respondent herein in CST No.3913/2013-2014 dated 25.11.2016, quashing the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.K.Venkatesh, GA

ORDER

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesah, learned Government Advocate accepting notice on behalf of the respondent and with the consent on either side, the writ petitions are taken up for final disposal.

2 The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] as well as under the Central Sales Tax Act, 1956. In this writ petition, the petitioner challenges the Assessment order dated 25.11.2016 for the Assessment Year 2013-2014. The impugned Assessment Order is challenged on three grounds, namely, non production of Form “C” and Form “H” Declarations and reversal of ITC u/s.19[5][c] of TNVAT Act, wherein, they have stated that they have decided to pay Rs.5,33,332/-. The

petitioner, on receipt of the notice dated 14.11.2016 submitted their reply dated 25.11.2016. In the said reply, with regard to Form "C" and Form "H" declarations, the petitioner stated that they are in the process of collecting the respective forms and will submit the same to the respondent at the earliest. With regard to the proposal to reverse ITC u/s.19[5][c], the petitioner has decided to prefer an appeal. Therefore, the petitioner requested for issuance of preliminary order against the notice at the earliest and after submission of Forms C and H, requested the respondent to issue a revised order. The petitioner, while stating that they have decided to prefer an appeal with regard to the proposal of the reversal of ITC u/s.19 [5][c] meant that they will challenge the statutory provision before this Court since the challenge to the provisions is pending in a batch of cases. However, the respondent finalised the assessment solely based on the stand taken by the petitioner in the reply dated 25.11.2015. As on date, the petitioner has not challenged the validity of section 19[2][v] before this Court. That apart, as of now, the petitioner has collected some more Forms C and H declarations which they are ready and willing to produce before the Assessing Officer. Therefore, in stead of making piecemeal assessment, this Court is of the view that the Assessing Officer should do a complete assessment after the receipt of Forms C and H declarations.

3 The Commissioner of Commercial Taxes, by taking note of the decision of the Division Bench of this Court in the case of M/s.Arulmurugan and Company reported in [1984] 51 STC 381, has issued a Circular in Circular Acts Cell III 23367/93 dated 30.04.1993, to all the Assessing Officers giving directions as to what should be their approach when there is a belated submission of such declaration forms. The operative portion of the Circular reads as follows:-

> "The first original assessment order is to be passed with the maximum available "C" Forms. However, where the party subsequently produces C" Forms from other States invoking the provision that he [assessee] had tried his best, but it was beyond his control, because C" Forms were either not readily available or readily issued in those States, the Assessing Officers have to be liberal in reopening and reassessing of such cases. Further, the High Court of Madras has held in the case of M/s.Arulmurugan and Co., reported in [1984] 51 STC 381 that the proviso to section 8[4] does not insist that the assessee should establish before the prescribed authority that he was prevented by sufficient cause from filing the C" Forms in time.

> "Sufficient cause", spoken of the section 8[4] is sufficient cause which appeals to the mind of the authority concerned and which enables it to allow further time without bothering about any onur on the assess. Following the decision, this facility must be extended without fail. In stead of driving the assessee to go on appeal for this simple matter and getting the case remanded by the appellate forum for reopening and considering the C" Forms filed at the time of hearing the appeal, the Assessing Officers, themselves may reopen the cases, admit the new C" Forms check on their correctness and genuineness and pass revised assessment orders, as long as the period does not exceed the period of limitation."

4 In terms of the above circular, no strict guidelines have been fixed for production of such declaration forms and the object of production of these forms is to enable the dealer to avail concessional rate of tax. Therefore, a rigid and strict interpretation cannot be done in this regard and the Assessing Officer would be justified in accepting the forms even after the assessment is completed.

5 Thus, for the above reasons, this Court is of the view that the assessment can be re-done afresh after receiving Forms C and H declarations, which the petitioner is in position as on date. With regard to the proposal u/s.19[2][v] is concerned, since the petitioner is yet to challenge statutory provision before this Court, the has given liberty to raise objections on the said issue.

6 In view of the aforesaid findings, the writ petition stands allowed and the impugned order passed by the respondent dated 25.11.2016 is set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is granted four weeks time to produce Forms C and H Declarations and also submit further objections to the proposals to reverse ITC u/s.19[5][c] and on receipt of the same, the respondent shall re-do the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

The Assistant Commissioner [CT]
Anna Nagar Assessment Circle, 1B
Lakshmipuram 2nd Street,
Villivakkam, Chennai 600049.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.71199
+1cc to the Spl Government Pleader(T), S.R.No.71510

RV(CO)
BB(29/12/2016)

WP.No.42403/2016