IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.7087 and 7156 of 2014

&

M.P.Nos.1+1 of 2014

Forech India Limited
Rep. by its Vice President (Finance and Administration)
1, SIPCOT Industrial Park
Cholavaram Post, Cheyyar Taluk
Thiruvannamalai District ... Petitioner in both petitions

Vs.

1. The Commercial Tax Officer
Vandavasi
43/41 Sannathi New Street
Vandavasi-604 408

2.The Commissioner of Commercial Taxes
Chepauk, Chennai

3.The Government of Tamil Nadu
Represented by its Secretary
Commercial Taxes Department
Fort St. George
Chennai-600 009 ...Respondents in both petitions

Prayer in W.P.No.7087 of 2017 : Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent in order No.CST/377456/2012-13 dated 17.01.2014, quash the same and consequently direct the 1st respondent to afford the petitioner an opportunity of personal hearing and decide the matter on merits.

Prayer in W.P.No.7156 of 2014 : Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records relating to the notice dated 27.02.2014 issued by the 1st respondent and quash the same.

For Petitioner : Ms.R.Charulatha
for Ms.Lakshmikumaran

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

Heard Ms.R.Charulatha, learned counsel appearing on behalf of Mr.Lakshmikumaran, learned counsel on record for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Central Sales Tax Act, 1956 and the Tamil Nadu Value Added Tax Act, 2006, has filed these writ petitions challenging the Assessment Order dated 17.01.2014 for the Assessment Year 2012-13 under the Central Sales Tax Act and the consequential demand notice dated 27.02.2014.

3. The issues involved in the impugned Assessment orders are five in number, namely 1) Sales covered by C Forms, 2) Sales not covered by C Forms, 3) Export Sales which have been disallowed, 4)Job work taxed as inter-state sales and 5) ITC reversal under Section 9(2) r/w. 19(5)(c) of the Act.

4. The petitioner had approached this Court by filing a writ petition in W.P.29705 of 2013 for the Assessment year 2011-12 wherein one of the 5 issues involved in these writ petitions, namely the issue relating to job work taxed as interstate sales came up for consideration. This Court, after noting the objections of the Assessing Officer through the Government Pleader, allowed the writ petition and remanded the matter to the respondent for fresh consideration after affording an opportunity of personal hearing and redo the assessment in accordance with law. On remand, the respondent has passed an order on 12.04.2017 accepting the stand of the petitioner as they have proved that the job work done is only for their factory in other State and there is no element of sale. Therefore, similar order can be passed in the present petition also. As the impugned assessment order has been passed in violation of principles of natural justice, this point also holds good for the four other issues which have arisen in this writ petition.

5. With regard to sales covered by C Forms, the petitioner's contention is that they have paid through credit at the time of filing returns. With regard to the sales not covered by C forms and taxed at 14.5%, the petitioner requested extension of time and the Assessment Order has been passed without affording an opportunity of personal hearing and if such hearing had been afforded, the petitioner would have been able to produce majority number of C forms. So far as the export sales, which has been disallowed and taxed at 14.5% is concerned, the petitioner would plead that the export documents have been submitted subsequent to the Assessment Order and if an opportunity of personal hearing is granted, the petitioner would establish that they have effected valid export sales. With regard to the reversal of ITC under Section 9(2) r/w.Section 19 (5)(c) of the Act is concerned, the petitioner's contention is that there is no power under Section 9(2) of CST Act to propose reversal of ITC. In support of his contention, reliance has been placed on the decision of this Court in M/s.Chennai United Metal Industries Pvt Ltd., Vs. Commercial Tax Officer reported in 2018-TIOL-2797-HC-MAD-VAT.

6. The learned Additional Government Pleader appearing for the respondent has produced the written instruction given by the Assessing Officer and I find that the written instructions are exactly the same as was placed before this Court in the earlier writ petition. On a perusal of the impugned Assessment Order it is evidently clear that that the same has been completed without an opportunity of personal hearing to the petitioner and it is in violation of principles of natural justice.

For all the above reasons, these writ petitions are allowed and the impugned assessment orders are set aside and the matters are remanded to the respondent for fresh consideration. On remand, the respondent shall take note of his earlier Assessment Order made by him for the Central Sales Tax Assessment for the Assessment Year 2011-12 dated 12.04.2017, verify the C forms and export documents given by the petitioner and initiate appropriate proceedings under the provisions of Tamil Nadu Value Added Tax Act, if at all any reversal of ITC is required to be done. It is needless to state that the authorized representative of the petitioner be afforded an opportunity of personal hearing. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

gpa

To

1. The Commercial Tax Officer
   Vandavasi
   43/41 Sannathi New Street
   Vandavasi-604 408

2.The Commissioner of Commercial Taxes
   Chepauk, Chennai

3.The Secretary
   Government of Tamil Nadu
   Commercial Taxes Department
   Fort St. George
   Chennai-600 009

+1 CC SPL.GOVT.PLEADER Advocate SR.No.74135
+2 CC M/S.LAKSHMI KUMARAN Advocate SR.No. 74016

KK(CO)
EGR 14/11/2017

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