IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED;27.11.2017
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.30642 of 2017 & WMP.No.33512 of 2017

M/s.Sri Perumal Steel Corporation,
rep.by its Proprietor Mr.P.Jayabalan ...Petitioner

Vs

The Assistant Commissioner (CT),
Ariyalur Assessment Circle, Ariyalur. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN.33843601191/2009-10 and quash the impugned order dated 20.9.2017 as passed without authority of law, contrary to the provisions of the Tamil Nadu Value Added Tax Act and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. In view of the glaring legal error committed in passing the impugned order, the writ petition itself is taken up for final disposal even at the admission stage.

2. The petitioner is a dealer in cycle, electrical, oil engines, mill store, G.I. pipes, cement and also an iron merchant, registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the TNVAT Act, 2006) and now under the Central Goods and Service Tax Act, 2017. The petitioner is aggrieved by the order of assessment passed by the respondent for the year 2009-10.

3. Earlier, the petitioner approached this Court and filed W.P.No.4149 of 2014 challenging the assessment order dated 30.7.2013 alleging to be contrary to Section 3(4)(b) of the TNVAT Act, 2006. This Court, while disposing of the said writ petition by order dated 04.7.2016, observed that the respondent had stated that the petitioner's total turnover crossed Rs.50 lakhs during the previous year i.e. 2008-09 and that they filed

revised returns for the year 2009-10 pursuant to the surprise inspection conducted on 25.2.2010. It was further observed that though the respondent accepted filing of the revised returns on 19.3.2010, the claim for input tax credit made by the petitioner was not considered because the petitioner failed to produce the purchase bills. This Court also observed that as the turnover exceeded Rs.50 lakhs for the assessment year 2008-09, the petitioner was statutorily bound to file Form I return with effect from 01.4.2009. However, this issue was left open to be agitated before the Assessing Officer.

4. In the said writ petition, the petitioner contended that they did not have adequate opportunity to produce the documents namely purchase bills and prayed for one more opportunity to place all the materials before the Assessing Officer. Considering the submissions made, the petitioner was directed to pay 15% of the disputed tax and if the petitioner complied with the said condition, the petitioner was permitted treat the impugned order therein dated 30.7.2013 as a show cause notice and submit their objections.

5. The petitioner complied with the condition imposed in the earlier writ petition and immediately thereafter, the respondent issued the notice dated 10.2.2017 calling upon the petitioner to file their objections as to why the claim for input tax credit should not be denied, to which, the petitioner submitted their objections. It is thereafter the respondent has passed the impugned order in this writ petition.

6. In the objections filed by the petitioner, they had specifically stated that they had filed Form I returns, claimed input tax credit and submitted copies of those returns and proof of payment of tax. The petitioner also placed reliance on the decision of this Court in the case of C.K.G. Agencies Vs. AC (CT) [reported in (2012) 54 VST 501]. The petitioner further pointed out that when mistakes were brought to the notice pursuant to the inspection, they immediately submitted Form I returns under Rule 7(1)(a) of the Tamil Nadu Value Added Tax Rules, 2007 for the months from April 2009 to January 2010 and subsequently submitted the returns for the months of February 2010 and March 2010 respectively. In those returns, they claimed input tax credit under Section 19(1) of the TNVAT Act, 2006. The petitioner also submitted that their claim of input tax credit was reasonable and allowable within the norms of Section 19(11) of the TNVAT Act, 2006.

7. Though the petitioner specifically placed reliance on the decision of this Court in the case of C.K.G.Agencies, the respondent, while completing the assessment, has not even referred to the said decision. This Court is informed that

Assessing Officers are supplied with the copies of the law reports and obviously, the respondent should have been aware of the decision of this Court on the very same issue.

8. Further, this Court, in the case of Sri. Murugan Agency Vs. CTO (FAC), Namakkal (Rural) Assessment Circle [W.P.No.28478 of 2008 dated 03.11.2017] had an occasion to consider a similar issue. The point for determination was as to whether the petitioner therein can be denied the input tax credit for the period from April 2007 onwards and as to whether the respondent therein was right in restricting it for a period of 90 days. Ultimately, it was held that the question of restricting the input tax credit for a period of 90 days is incorrect and taking note of the decision in the case of C.K.G.Agencies, this Court allowed the said writ petition. The relevant portion of the order dated 03.11.2017 reads as follows :

> "5. The next and most important question would be whether the petitioner can be denied input tax credit for the period from April 2007 onwards and whether the respondent was right in restricting it for a period of 90 days, since I have already held that Section 3(4) of the TNVAT Act, would have no application to the instant case. The question of restricting the input tax credit for 90 days is incorrect. If such is the situation, it goes without saying that the petitioner would be entitled to input tax credit for the entire period, as the petitioner has paid higher rate of tax. This very issue has been answered by this Court in the case of C.K.G. Agencies vs. Asst. Commissioner (CT), reported in (2012) 54 VST 501 (Mad). The operative portion of the order is as follows:
>
> 'The petitioner herein opted to pay compounding tax as per section 3(4) of the Tamil Nadu Value Added Tax Act, 2006, as the assessee expected the turnover for the year 2007-08 as between Rs. 10 lakhs and Rs. 50 lakhs. The petitioner filed the monthly returns in form K disclosing the turnover and corresponding tax at 0.5 per cent. It is stated that the petitioner's turnover, however, exceeded Rs. 50 lakhs and hence, not eligible for compounded rate of tax at 0.05 per cent. The petitioner filed the form I monthly returns from April, 2007 to March, 2008 by taking credit of the tax paid on the

purchases during the relevant assessment year 2007-08 and after adjusting the input-tax credit, it paid the tax under section 3(2) of the Tamil Nadu Value Added Tax Act, 2006. On December 18, 2009, the respondent determined the total and taxable turnover at Rs. 57,92,100 by accepting the turnover reported by the petitioner, but took the input-tax credit for the month of March, 2008 alone. The petitioner's grievance is that the said order is contrary to the circular issued by the Commissioner dated August 29, 2007, wherein, it is clarified that if the turnover of the assessee exceeded Rs. 50,00,000 in the middle of the year, then the assessee would not be assessed at the compounded rate of tax under section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 and he has to pay higher rate of tax and eligible for input-tax credit for the purchases made from the beginning of the year. The said clarification given in the case of individual assessee is applicable to the case of the petitioner also. Consequently, the order suffered an illegality. The petitioner made a representation by way of rectification petition on February 9, 2010, pointing out to the clarification dated August 29, 2007 and requested the respondent to cancel the demand. By proceedings dated February 23, 2010, the respondent rejected the prayer by stating that it is open to the petitioner to get necessary relief from the appropriate forum against the order passed by the assessing authority. The petitioner submits that having regard to the clarification given by the Commissioner, which is binding on the assessing officer, once the petitioner crosses the turnover of Rs. 50,00,000, he is eligible for the benefit of input-tax credit. It is not denied by the respondent that the petitioner had paid tax at four per cent and 12.5 per cent for every month as per section 3(2) of the Tamil Nadu Value Added Tax Act, 2006.

2.The learned counsel appearing for the petitioner pointed out to section 3(4) of the Tamil Nadu Value Added Tax (Second Amendment) Act, 2008 to substantiate his case as regards the availing of input-tax credit in respect of turnover exceeding Rs. 50,00,000 and the proviso introduced only under the Tamil Nadu Act 49 of 2008, that the said proviso has no application to the present case. Hence, the petitioner is entitled to have the benefit of input-tax credit, once the turnover exceeds Rs. 50,00,000 limit. Going by the Commissioner's clarification, the benefit of input-tax credit has to be extended to the assessee like the petitioner, the moment the petitioner's turnover exceeded Rs. 50,00,000 and that he would not eligible to be assessed under section 3(4) of the Tamil Nadu Value Added Tax Act.

It is seen that in the rectification petition filed, the petitioner pointed out to the turnover of the year crossing Rs. 50,00,000 and that the assessment made by the officer was going against the Commissioner's clarification dated August 29, 2007 and hence, the same was liable to be set aside. On the admitted facts as to the petitioner's turnover is more than Rs. 50 lakhs, the Commissioner's clarification is binding on the assessing authority, it is necessary that the assessment has to be reviewed in accordance with law as well as the clarification. It however has to be noted that in the rectification petition filed by the petitioner, there are hardly any details as to the month when the turnover exceeded Rs. 50,00,000 limit for the purpose of granting the benefit of input-tax credit.

In the circumstances, the order passed by the respondent is set aside and the petitioner is hereby directed to furnish the details of the turnover crossing Rs. 50,00,000. On such furnishing of the details, the respondent shall take into account the Commissioner's clarification and pass orders in accordance with law.

With the above observation, the writ petitions are disposed of'."

9. Had the respondent afforded an opportunity of personal hearing to the petitioner, they would have been in a position to explain the factual situation and would have placed legal submissions, which they had raised in their objections. This is the reason why the Hon'ble Division Bench pointed out that even though the Act does not specifically provide for an opportunity of personal hearing, there is no bar for Assessing Officers to

call upon the assessees to appear before them, produce documents and explain their case. Had this procedure been adopted in all probabilities, the respondent would not have passed the impugned assessment order. Thus, the legal position having been settled in the aforesaid decision in favour of the petitioner, it has to be necessarily held that the impugned order deserves to be set aside.

10. The learned Government Advocate, who is seeking to sustain the impugned order, submits that if the petitioner has any grievance against the impugned order, they should have filed an appeal before the Appellate Authority and that they should not have filed a writ petition before this Court.

11. This Court is unable to accept the stand taken by the learned Government Advocate for the reason that the respondent completed the assessment without taking note of the legal issue, which has already been settled by this Court in the case of C.K.G.Agencies. Therefore, the petitioner need not be asked to avail the appellate remedy against the impugned order.

12. For all the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration. The respondent shall take note of the decisions of this Court in the case of C.K.G.Agencies and in the case of Sri. Murugan Agency, redo the assessment on merits and in accordance with law and extend appropriate relief to the petitioner after affording an opportunity of personal hearing. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RS
To
The Assistant Commissioner (CT), Ariyalur Assessment Circle, Ariyalur.

+1cc to M/s.P.Rajkumar, Advocate Sr.No.84005
+1cc to Special Government Pleader SR.No.84610

WP.No.30642 of 2017&
WMP.No.33512 of 2017

RSI(CO)
sm:15.12.2017