IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.07.2017
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
Writ Petition No.8938 of 2017
and
W.M.P.Nos.9855 and 9856 of 2017

Shintec Engineering India Pvt. Ltd.,
Represented by its Director,
No.156, AVN Complex, I Floor,
Poonamallee High Road, Vanagaram,
Chennai - 600 095. ... Petitioner

vs

The Assistant Commissioner (CT)
J.J Nagar Assessment Circle,
Chennai - 600 040.
... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his Order of Assessment in TIN 33611350966/2013-14 dated 17.03.2017 and quash the same as illegal, arbitrary and unconstitutional as having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders of assessment for the Assessment Year 2013 - 2014 by considering the objections filed by the Petitioner and after granting an opportunity of personal hearing as provided under Section 27 of the TNVAT Act 2006.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard. Mr.R.Ganesh Kanna, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act (TNVAT Act) and Central Sales Tax Act, 1956 (CST Act), is aggrieved by an order of assessment dated 17.03.2017 passed by the respondent under the provisions of the TNVAT Act for the year 2013 – 2014.

3.The petitioner is a private limited company, who are carrying on business as works contractor, having registered Office in Chennai and registered as a dealer on the file of the respondent. The place of business of the petitioner was inspected by a team of Enforcement Wing Officers on 19.06.2015 and verified the records available in the place of business and pointed out certain defects. This report of the Enforcement Wing Officers has lead to issuance of notices by the respondent dated 18.05.2015 and 18.01.2016. The petitioner submitted their objections and sought for personal hearing, however, without affording an opportunity of personal hearing, the respondent has completed the assessment and under normal circumstances, the petitioner will not be permitted to bypass the appeal remedy available under the provisions of the TNVAT Act. However, the learned counsel for the petitioner made elaborate submissions to demonstrate that the impugned assessment order suffers from an error apparent on the face of the record and also it is in violation of the principles of natural justice.

4. I have heard the submissions of the learned Government Advocate and also perused the counter filed by the respondent.

5. The assessment has been completed under Section 27 (1) of the Act and there are 8 heads, under which, the turnover has been assessed and tax has been levied. In respect of Serial No.3, which pertains to the sale of used cars, the respondent has levied a sum of Rs.8000/- as Tax at the rate of 5% on the turnover of Rs.1,60,000/-. The petitioner has produced a proof to show that this amount of Rs.8000/- has been paid by way of Demand Draft dated 01.02.2016, a copy of which has been filed in the typed set of papers. Thus, the demand of Rs.8000/- as tax is on account of non-application of mind. This has been admitted by the respondent in paragraph No.17 of the counter affidavit. Therefore, it shows the respondent did not properly apply his mind while passing the assessment order.

6. Regarding the assessment under Serial Nos.4, 5 and 6, which all related to reversal of Input Tax Credit, the respondent has stated that the petitioner has not given any objection. However, there is a proof to show that the objection dated 16.06.2016 has been given by the petitioner and acknowledged by the office of the respondent as could be seen from the signature contained in the office copy of the objections filed in Page No.47 of the typed set of papers.

Therefore, this one more ground shows that the impugned order is outcome of the non-application of mind and violation of the principles of natural justice.

7. So far as the turnover in Serial Nos.7 and 8 is concerned, namely, sales at 5% and sales at 14.5%, it is seen that there is no such proposal in the show cause notice. Thus, assessing the petitioner to tax under those two heads are in violation of the principles of natural justice. This leaves with two other heads, namely, difference in sales turnover in Serial No.1, wherein the tax has been levied at 14.5%. It is not clear as to how the respondent has arrived at the said figure and appears to have been culled out from the Audit report filed by the petitioner under the Maharashtra Sales Tax Act. However, if an opportunity had been given to the petitioner to personally appear before the respondent, the matter could have been sorted out by obtaining appropriate explanation from the petitioner. In fact, in paragraph 9 of the counter affidavit, the respondent would state that in the absence of any details, tax was levied as per the profit and loss account and Form WW.

8. With regard to the exempted sale, which has been disallowed, that is in Serial No.2, once again it is not clear as to how the respondent has arrived at such figure. If personal hearing had been granted, this issue also could have been sorted out. Further, a sum of Rs.65,42,977/- has been adjusted towards input tax credit, whereas the petitioner would state that the adjustment has to be made to the extent of Rs.69,03,219/- and this is contained in Annexure-A to their objection dated 16.06.2016. Thus, the impugned assessment order has many flaws and it is vitiated on the ground of violation of the principles of natural justice.

9. Since the respondent has passed an elaborate order and certain factual issues have been mentioned, it would be advisable for the petitioner to submit their objections to the impugned assessment order by treating it as show cause notice, so that the assessment can be redone from the stage where the respondent has left the matter.

10. In the light of the above, the writ petition is disposed of by directing the petitioner to submit further objections, by treating the impugned assessment order as a show cause notice within a period of 15 days from the date of receipt of a copy of this order and on receipt of the same, the respondent shall afford an opportunity of personal hearing to the petitioner and peruse the books of accounts and seeks for clarification and redo the assessment in accordance with law.

In the light of such order, the respondent is directed not to initiate any coercive steps for recover of any tax or penalty as proposed in the impugned assessment order. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rna

To

The Assistant Commissioner (CT)
J.J Nagar Assessment Circle,
Chennai - 600 040

+1 cc to Special Government Pleader sr 52640

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