IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.2079 of 2017
and
W.M.P.No.2051 of 2017

Tvl.Royal Welding Wires Pvt. Ltd.,
Rep by its Managing Director Mohammed N Bharmal,
No.7, Karanai Puducherry Village,
Via Urapakkam, Chennai 603 202. ... Petitioner

vs

The Assistant Commissioner (CT),
Thirukazhukundram Assessment Circle,
Thirukazhukundram, Chennai - 603 202. ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ, order or direction in the nature of a Writ of Certiorari, calling for the records of the respondent in TIN/33681681746/2013-14 dated 16.09.2016 quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard. Mr.S.Raveekumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent of either side, the writ petition itself is taken up for disposal.

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2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act). The petitioner filed their returns as per the provisions of TNVAT Act, paid the admitted tax and availed input tax credit. The petitioner filed an application in Form W claiming that they have effected zero rated sales and therefore, sought for refund for the sales during the period from January 2014 to February 2014. The said application in Form W was kept pending for nearly two years. While so, the respondent passed an order of assessment for the

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year 2013-14 on 28.03.2016 without reference to their application pending in Form W. Therefore, the petitioner filed an application under section 84 of the TNVAT Act for rectification of the order of assessment. While the said application was pending, the petitioner moved this Court in W.P.No.30988 of 2016 seeking directions on the refund application. The petitioner filed W.P.Nos.30990 to 30992 of 2016 challenging the assessment orders for the year 2010-11 to 2012-13 under the TNVAT Act and W.P.No.30989 of 2016 challenging the assessment order for the year 2013-14 under the CST Act. W.P.No.30989 of 2016 was disposed of by this Court on 09.11.2016 by issuing the following directions:

> "5.Accordingly, the writ petition is partly allowed and the order dated 14.06.2016 is set aside in so far as it does not consider the documents filed by the petitioner namely Form WW, export documents, etc., without disturbing the finding rendered in the impugned order with regard to C and F Forms, for which, due credit has been given. The respondent is directed to redo the assessment only in respect of the issues, which were not considered and pass a fresh order in accordance with law."

3.W.P.Nos.30990 to 30992 of 2016 was disposed of by this Court by a separate order dated 09.11.2016 by issuing the following directions:

> "8.Accordingly, the writ petitions are disposed of with a direction to the petitioner to file a petition under Section 84 of the State Act within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent shall afford an opportunity of personal hearing, consider the issues pointed out by the petitioner in an effective manner by providing all the details, which were sought for and pass an order in accordance with law, within two weeks thereafter. Till then, no coercive action shall be taken against the petitioner for recovery of tax and penalty as computed in the impugned assessment orders."

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4.W.P.No.30988 of 2016 filed for a direction to pass orders on the refund application in Form W was disposed of by a separate order dated 09.11.2016 giving liberty to the petitioner to challenge the order passed by the authority proposing to adjust the refund claim as against the assessments. The petitioner is now before this Court challenging the order dated 16.09.2016 under the provisions of TNVAT Act, where the authority while admitting that the petitioner is entitled for

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refund of Rs.1,37,82,332/- adjusted the same as against the tax due for the year 2013-14 under the CST Act.

5.The learned counsel for the petitioner submitted that the impugned order is in violation of the principles of natural justice as no notice was issued prior to deducting a sum of Rs.26,56,749/- from the refund claim of Rs.1,64,39,081/-. He would further submit that in terms of sub-section 17 of Section 19 of the TNVAT Act if the input tax credit determined by the Assessing Authority for the year exceeds the tax liability for that year, the excess may be adjusted for any outstanding tax due from the dealer. However, prior to exercising such power, the dealer is entitled to be heard in the matter, especially, when the refund application was kept pending for over two years. Further, it is submitted that the respondent failed to adhere to the directions issued by this Court in the case of I.T.W. Signode India Limited vs. State of Jharkhand and others reported in (2007) 8 VST 182. Further, it is submitted that the deduction of Rs.26,56,749/- has been made alleging mismatch between the Annexure I and II of the other end dealer and this has been held to be unsustainable by this Court in several decisions. Further, it is submitted that if the vendor has not remitted tax, the Department has to invoke Section 27 of the TNVAT Act and proceed against the vendor and not to penalize the petitioner purchaser. In support of such contention, reliance was placed on the decision in the case Althaf Shoes (P) Ltd., vs. Assistant Commissioner (CT), Valluvakottam Assessment Circle, Chennai-6 (CVJ Judgment) reported in (2012) 50 VST 179, Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another (RSJ Judgment) reported in (2013) 60 VST 283 and Infinity wholesale Ltd. Assistant Commissioner (CT), Koyampedu Assessment Circle, reported in (2015) 82 VST 457) which was confirmed by the Hon'ble Division Bench in W.A.No.775 of 2016.

6. On a perusal of the impugned order, it is evidently clear that the petitioner did not have an opportunity to putforth their objections to show cause as to why a deduction of a sum of Rs.26,56,749/- is not sustainable. In the impugned order, the respondent has admitted the fact that the petitioner has filed a petition under section 84 of the TNVAT Act requesting to revise order of assessment in the year 2013-14 and accepting the Form C and Form F declaration, revision order was passed for the said year by order dated 14.06.2016 resulting in balance of tax due of Rs.3,95,18,210/-. Though the above stand has been taken by the respondent in the impugned order, in the light of the fact that this Court had disposed of earlier writ petitions by issuing directions referred supra, any order passed in those proceedings pursuant to the order of remand will have a direct bearing on the present issue. It is brought to the notice of this Court by the learned Government Advocate that on

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remand, the matter is now pending consideration of the Assessing Officer.

7. As pointed out earlier, the petitioner was not afforded an opportunity to putforth their objections before the impugned order was passed. Furthermore, since this Court has remanded the matter for fresh consideration in the above referred decisions, the present order also requires re-consideration as it will be subject to whatever orders that may be passed pursuant to the directions issued by this Court in W.P.No.30986 of 2016 dated 09.11.2016 and W.P.Nos.30990 to 30992 of 2016 dated 09.11.2016.

8. For all the above reasons, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall issue fresh show cause notice and permit the petitioner to file their objections within a reasonable time and take up for consideration and adjudicate the same along with other matters which have been remanded for fresh consideration in terms of the earlier orders referred supra. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rna

To

The Assistant Commissioner (CT),
Thirukazhukundram Assessment Circle,
Thirukazhukundram, Chennai - 603 202.

+1cc to Special Government Pleader in sr.no.46157
+1cc to Mr.RaveeKumar, Advocate in sr.no.46112

W.P No.2079 of 2017

MSM(CO)
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