In the High Court of Judicature at Madras

Dated : 20.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.33323 & 33324 of 2017
& WMP.Nos.36764 & 36765 of 2017

M/s.Siegwerk India Private Limited,
rep.by its Administration Head
Mr.K.P.Sasindrababu ...Petitioner

Vs

The Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
No.791, Thiruvottiyur High Road,
Chennai-19. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN : 33171102403/2014-15 and TIN : 33171102403/2015-16 and quash the orders respectively dated 27.6.2017 and 15.7.2017 as passed in violation of the principles of natural justice and further direct the respondent to grant an opportunity to the petitioner and pass a fresh assessment order in accordance with law.

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

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a manufacturer of ink, registered as a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. In the course of business, the petitioner effected local sales, inter-state sales and also sales to 100% export oriented units located in Tamil Nadu. The petitioner is stated to have effected sales to four such 100% exported oriented units namely

(i) M/s.Eagle Press Pvt. Ltd.
(ii) M/s.Gopsons Paper Limited
(iii) M/s.RR Donnelly Publishing India Pvt. Ltd. and
(iv) M/s.Stora Enso Inpac Delta India (P) Ltd.

3. The respondent issued notices dated 03.2.2017 and 20.3.2017 proposing to revise the assessments for the years

2014-15 and 2015-16 respectively. The petitioner filed their objections dated 27.2.2017 and 24.3.2017 for those two revision notices. The respondent perused the details furnished and found that the petitioner produced necessary green card copies in respect of two of the 100% export oriented units namely M/s.Eagle Press Pvt. Ltd. and M/s.Gopsons Paper Limited. For the balance claim, there was no documentary evidence and therefore, the claim for exemption of turnover was disallowed and the petitioner was assessed to tax at 5%. Challenging this portion of the orders, the petitioner is before this Court.

4. Admittedly, the petitioner has not filed any documentary proof to establish that they effected zero rated sales to the other two 100% export oriented units and hence, the respondent is well within his jurisdiction.

5. The learned counsel for the petitioner would contend that as of now, the petitioner is in possession of copies of the green cards for the other two 100% export oriented units and that the assessment orders, to that extent, may be set aside and an opportunity may be granted to the petitioner to go before the Assessing Officer and place the documents.

6. In my considered view, the necessity to set aside the impugned assessment orders does not arise, as, on the date of passing of the assessment orders, the documents now in the possession of the petitioner were not placed before the Assessing Officer. Therefore, the Assessing Officer cannot be faulted for having completed the assessment in the manner done so in the impugned assessment orders. However, this Court does not want to deny the petitioner the benefit of claim for exemption on technicalities, since the exemption is an incentive given to a manufacturer when he effects sales to 100% export oriented units. With that in mind, this Court is inclined to issue appropriate directions to the Assessing Officer to consider the documents that will be produced by the petitioner to justify the claim for exemption in respect of the other two 100% export oriented units.

7. The learned counsel for the petitioner submits that if the petitioner has to approach the respondent by way of a petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, there is every possibility that the said petition may be rejected for the reason that the petitioner preferred statutory appeals before the Appellate Deputy Commissioner (CT) (North) and that those appeals were rejected as time barred.

8. The petitioner need not have any such apprehension, as this Court is inclined to issue appropriate directions to the Assessing Officer, who is bound to follow the same. As observed earlier, the claim for exemption is an incentive granted to a local manufacturer when he effects sales to 100% export oriented units. Therefore, the claim for exemption should not be denied on technicalities, but the claim has to be verified and if the petitioner produces necessary documents to the satisfaction of

the Assessing Officer that they effected sales to 100% export oriented units, then the benefit of exemption should accrue to the petitioner.

9. For all the above reasons, the writ petitions are disposed of by directing the petitioner to file petitions before the respondent along with a copy of this order enclosing the copies of green cards pertaining to M/s.RR Donnelly Publishing India Pvt. Ltd. and M/s.Stora Enso Inpac Delta India (P) Ltd. As and when the petitions are received, the Assessing Officer is directed to afford an opportunity of personal hearing to the petitioner, peruse the documents and if the documents are in order, sanction the claim for exemption by passing revised orders. Till the above direction is complied with, the respondent shall not initiate any coercive action against the petitioner for recovery of tax and penalty computed in the assessment orders. It is well open to the petitioner to produce the documents even for the other two 100% exported oriented units, for which, it appears that the claim for exemption has been denied for the assessment year 2015-16. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT), Thiruvottiyur Assessment Circle, No.791, Thiruvottiyur High Road, Chennai-19.

+1cc to Mr.P.RAJKUMAR Advocate, S.R.No. 90793
+1cc to the Government Pleader, S.R.No. 91768

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NRK(CO)
TR(09/01/2018)