IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01-02-2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2413 of 2017

and W.M.P.No.2391 of 2017

M/s. Aachi Masala Foods Ltd.,
Rep. by its Managing Director
Mr. A.D. Padma Singh Issac
No.181/1, Old No.4, Thangam Colony
Anna Nagar, Chennai - 600 040 .. Petitioner

Vs.

The Assistant Commissioner (CT)
Amaindakarai Assessment Circle
No.F-50, 1st Main Road, 2nd Floor
Anna Nagar, Chennai - 600 102 .. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in CST/866410/2013-14 dated 16-11-2016, quash the same and further direct the respondent to pass orders in the representations dated 23-11-2016 enclosing original "C"declaration Forms (received by her on 25-11-2016) and representation dated 29-12-2016 after affording an opportunity of being heard and thereafter take action in accordance with provisions of the Central Sales Tax Act, 1956 read with Tamil Nadu Value Added Tax Act, 2006 and pass orders.

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For Petitioner : Mr. V. Sundareswaran

For Respondent : Mr. K. Venkatesh, Govt. Advocate

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ORDER

1. Issue notice. Mr. K. Venkatesh, accepts notice on behalf of the respondent. With consent of the learned counsel for the parties, the writ petition is taken up for hearing and final disposal.

2. This writ petition is directed against the assessment order dated 16-11-2016, passed by the respondent. By virtue of the impugned order, the petitioner/assessee has been called upon to pay tax amounting to Rs.3,77,68,914.00p(Rupees Three Crores Seventy Seven lakhs Sixty Eight thousand Nine hundred and fourteen only) after requisite adjustments are made vis-a-vis tax paid and Input tax Credits('ITC' in short).

2.1 To be noted the impugned assessment order concerns Assessment Year (A.Y.) 2013-2014.

2.2 A perusal of the impugned order shows that the petitioner had reported taxable turnover equivalent to Rs.1,01,25,83,691.00p (Rupees Hundred and One Crore Twenty Five lakhs Eighty three thousand Six hundred Ninety One Only), whereas by virtue of the impugned order, the respondent/assessing officer has determined the taxable turnover as Rs.1,07,68,52,424.00p (Rupees Hundred and Seven Crore Sixty Eight lakhs Fifty two thousand Four hundred Twenty Four Only).

2.3 The addition to taxable turnover has taken place on four counts:

(i) turnover not covered by C-Form, which is taxed at the rate of 5%;

(ii) turnover not covered, once again, by C-Forms, which taxed at the rate of 14.5%;

(iii) export sales claim disallowed, in the alleged absence of proof, which is taxed at the rate of 5%; and

(iv) E1-Sales claim disallowed in the absence of C-Form and E1-Form; taxed at the rate of 5%.

2.4 The record shows that the petitioner was issued a pre-assessment notice dated 06-10-2016, to which a response was sent by it via communication dated 23-11-2016. In this communication, the petitioner indicated that it could not be represented at the hearing convened by the respondent / Assessing Officer, as its Consultant had left. Furthermore, it was averred in the very same communication that the requisite C-Forms and other documents had been gathered and were available for submission.

3. As would be evident from the facts noted above, in the interregnum, on 16-11-2016, the respondent/Assessing Officer had passed the assessment order.

4. The petitioner, thereafter, on 29-12-2016, made a representation that the assessment order be revised.

5. I am informed that, though, this representation was received, no orders were passed by the respondent/Assessing Officer, qua, the representation.

6. Being aggrieved, the petitioner has moved this Court by way of the instant writ petition.

7. It is the submission of the learned counsel for the petitioner that the requisite declarations received in C-Forms are available, as also, requisite evidence evidencing claim qua export sales which was disallowed.

7.1 The learned counsel appearing for the petitioner, placing reliance on the Circulars, dated 01-02-2000 and 28-02-2001, says that the declarations in C-Forms can be accepted even at this stage. Furthermore, the learned counsel for the petitioner also relies upon the provisions of Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 ('1957 Rules' in short) to contend that C-Forms can be accepted by the respondent/Assessing Officer even at this stage.

7.2 It is the petitioner's case that there was sufficient cause shown as to why the necessary declarations and documents could not be filed, prior to the date of assessment.

8. Mr. Venkatesh, learned Government Advocate submits that there was admittedly, a failure on the part of the petitioner to file the relevant C-Forms and the requisite documents, and therefore, the respondent/Assessing Officer was well within his right to pass the impugned order.

9. I have heard the learned counsel for the parties and perused the record.

10. I am in agreement with the learned counsel for the petitioner that the necessary power vests in the respondent/Assessing Officer to accept the C-Forms, upon sufficient cause being shown for delay in filing the same. For this purpose, the relevant extract of Rule 12(7) of the 1957 Rules is reproduced hereafter:

> "12...(7) The declaration in Form C or Form F or the certificate in Form E-I or Form E-II shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates:
>
> Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."
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> (Emphasis is mine)

11. The Circulars dated 01-02-2000 and 28-02-2001 cited

before me are indicative of the same position. To be noted, Circular dated 01-02-2000 is based on the observations made by a Full Bench of this Court in State of Tamil Nadu Vs. Tvl.Arulmurugan and Co.((1982) 51 STC 381). For the sake of convenience, the relevant part of the said Circular is also, extracted hereunder:

> "the first original assessment order is to be passed with the maximum available 'C' forms. However, where the party subsequently produces 'C' Forms from other States invoking the provision that he(assessee) had tried his best, but it was beyond his control, because 'C' Forms were either not readily available or not readily issued in those States, the Assessing Officers have to be liberal in reopening the reassessing of such cases. Further the High Court of Madras has held in the case of M/s.Arulmurugan and Co.,(1984) reported in 51 STC 381 that the proviso to Section 8(4) does not insist that the assessee should establish before the prescribed authority that he has prevented by sufficient cause from filing the 'C' Forms in time. 'Sufficient Cause' spoken of the Section 8(4) is sufficient cause which appeals to the mind of the authority concerned and which enables it to allow further time without bothering about any onus on the assessees. Following the decision, this facility must be extended without fail. Instead of driving the assessee to go on appeal for this simple matter and getting case remanded by the appellate forum for reopening and considering the 'C' forms filed at the time of hearing the appeal, the Assessing Officers themselves may reopen the cases, admit the new 'C' forms, check on their correctness and genuineness, and pass revised assessment orders, as long as the period does not exceed the period of limitation. Thus the instruction insists that 'Sufficient Cause' spoken of the Section 8(4) is sufficient cause which appeals to the mind of the authority concerned and which enables it to allow further time without bothering about any onus on the assessees. Hence, even if the dealer fails to explain the reason for the delay, the respondent has to independently apply his mind and decide about the 'C' forms, without insisting the onus on the assessee.."

12. As noted above, the other Circular dated 28-02-2001, takes the same position. To be noted, even though Circulars dated 01-02-2000 and 28-02-2001, were issued under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 by virtue of the provisions of Section 88(3)(i) of the Tamil Nadu Value Added Tax Act, 2006, they continue to remain in force.

12.1 Furthermore, the provisions of Section 55 of the Tamil Nadu General Sales Tax Act are pari materia with Section 84 of the TNVAT Act, 2006.

12.2 Thus, having regard to the aforesaid position, the plea of the petitioner with regard to consideration of the C-Forms by the respondent/Assessing Officer, even at this stage, would have to be accepted.

13. With regard to the other issue, documents submitted qua export sales, the respondent/Assessing Officer's stand, as articulated by her counsel, is that she has no power to revise the assessment and to accept documents, at this stage, in respect of export sales. Even I were to accept this stand of the respondent/Assessing Officer, it cannot come in the way of examining the tenability of such document, if submitted, in my view of the fact that once the issue is re-opened on one ground or other, the respondent/Assessing Officer would have power to consider the said document, which in any case have already been filed by the petitioner. I see no difficulty in the respondent/Assessing Officer considering the export sales documents, once the assessment is re-opened for considering the C-Forms.

14. In view of the above, the impugned order is set aside. The respondent/Assessing Officer shall redo the assessment, after considering the documents and declarations placed before her. The respondent/Assessing Officer shall pass a fresh assessment order, after affording an opportunity to the authorized representative of the petitioner. Needless to say the respondent/Assessing Officer will pass a speaking order, a copy of which will be supplied to the petitioner.

15. The writ petition is allowed, in the aforesaid terms. Consequently, the connected miscellaneous petitions shall stand closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

glp

To

The Assistant Commissioner (CT)
Amaindakarai Assessment Circle
No.F-50, 1st Main Road, 2nd Floor
Anna Nagar, Chennai - 600 102

+1cc to oMr. Sundareswaran, Advocate, SR. 6146

+1cc to the Special Govt. Pleader (taxes)
High Court,Madras SR. 6367

W.P.No.2413 of 2017

NMI(CO)
VR(16/02/2017)