In the High Court of Judicature at Madras

Dated: 15.02.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.3727 of 2017
and WMP No.3790 of 2017

Liberty Granites Ltd.
represented by its Director
Abhishek Saraogi
.... Petitioner

Vs

1. The Assistant Commissioner (CT)
Hosur (South), Hosur.

2. The Government of Tamil Nadu,
rep. by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.
.... Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the order passed by the first respondent in Order No.CST No.1047311/2015-16 dated 30.09.2016 received on 22.12.2016 and quash the same.

For Petitioner : Mr.J.Shankarraman

For Respondents : Mr.K.Venkatesh, G.A.

O R D E R

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents.

1.1. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. This Writ Petition is directed against the order dated 30.09.2016. The record shows that prior to the passing of the aforementioned assessment order, pre-assessment notice dated 11.08.2016 was issued to the petitioner. Via this notice, the petitioner was directed to file its objections, if any, qua the

proposal made in the pre-assessment notice. The petitioner was also directed to place on record the documentary evidence, if any, in support of its contention.

3. A perusal of the assessment order would show that it relates to the Assessment Year (A.Y.) 2015-16, made under Central Sales Tax Act, 1956. Respondent No.1 appears to have come to the conclusion that, in view of the fact that the petitioner had not filed the relevant declaration in Form 'C' and other records, the concessional rate of tax on Inter-State sales was not available. Accordingly, additions were made to the taxable turnover. The taxable turnover for the subject A.Y. was thus pegged at Rs.98,00,298/-, which was subjected to tax at the rate of 14.5%.

4. The petitioner's claim is that, as is evident, on a perusal of the assessment order, the pre-assessment notice dated 11.08.2016 was received by it only on 12.09.2016. According to the petitioner, the impugned order dated 30.09.2016 was passed just after the expiry of the 15 days period.

4.1. It is the petitioner's claim that no personal hearing was given and that objections could not be filed within 15 days from the date of receipt of a copy of the pre-assessment notice, in view of the fact that, the Officer, who was handling sales tax matter, had left the petitioner. According to the petitioner, no tax is leviable, as no Inter-State sale is involved.

4.2. It is the petitioner's case that it is a 100% Export Oriented Unit and is in the business of manufacturing granite tiles by procuring rough granite blocks domestically and thereafter, converting the said blocks into polished slabs. The petitioner avers that these polished slabs are exported and that there is no domestic sale. The petitioner, thus, submits, that if, an opportunity of personal hearing had been given, these facts could have been brought to the notice of respondent No.1.

4.3. In support of the contention made above, it is submitted that proviso to Section 22(4) of the 2006 Act makes the personal hearing compulsory. Furthermore, in support of this submission, reliance is also placed on a Circular dated 03.02.2014, issued by the Department.

5. Mr.Venkatesh, who appears on behalf of the respondents, says that, an opportunity was given to the petitioner, who did not avail of the same.

5.1. For this purpose, Mr.Venkatesh sought to draw my attention to the pre-assessment notice. Furthermore, it is the submission of Mr.Venkatesh, that the Circular dated 03.02.2016 only speaks of providing reasonable opportunity and, therefore, in the given facts and circumstances, such opportunity was given to the petitioner, as is evident from pre-assessment notice.

6. I have heard the counsels for the parties and perused the record.

7. Clearly, the pre-assessment notice was received by the petitioner on 12.09.2016. The 15 day window provided to the petitioner would come to an end on 27.09.2016. The impugned order was passed on 30.09.2016. Therefore, there was not enough time gap available to the petitioner to file its objections. Therefore, if, literally the directions contained in the pre-assessment notice are to be applied, the petitioner was given 15 days time to file its objections. The petitioner, however, has given reasons for not filing its objections within the given period of 15 days. Pertinently, while, there is nothing placed on record to demonstrate that the reasons are correct, the assertion made in this behalf is supported by an affidavit, which is not rebutted.

8. This apart, what perhaps goes in favour of the petitioner, is, the mandate of the proviso to Section 22(4) of the 2006 Act, which requires respondent No.1 to give personal hearing to the petitioner.

9. Furthermore, the submission of Mr.Venkatesh, that the Circular dated 03.02.2014 only speaks of reasonable opportunity has to be read in line with the proviso to Section 22(4) of the 2006 Act. The submission of Mr.Venkatesh is based on a reading of the following part of the Circular dated 03.02.2014.

> ".....(3)(a)Passing of orders:
> Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process...."

9.1. As correctly pointed out by the counsel for the petitioner, Clause (3) of the very same circular makes it clear that respondent No.1 was required to grant personal hearing in the matter, whether or not, the petitioner opted for the same. The relevant part of the circular is extracted hereinbelow:

> "....3(a)(3) As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it

shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not...."

9.2. Even otherwise, the Circular, in my view, cannot whittle down the width and amplitude of what the statute provides for. Therefore, the circular will have to be read in consonance with the provisions of the statute, if it is to be sustained. Non-provision of personal hearing impregnates the impugned order with illegality.

10. Accordingly, the impugned order is set aside. Respondent No.1 is given liberty, though, to redo the assessment.

10.1. For this purpose, the petitioner will appear before respondent No.1 on 01.03.2017 at 11.00 a.m. The petitioner will place before respondent No.1, its objections in writing, which will be accompanied by all relevant material, on which, reliance is sought to be placed. The material relied upon by the petitioner will be filed in original, with respondent No.1. Respondent No.1, will, thereafter, proceed to pass a fresh order after giving a personal hearing in the matter to the authorised representative of the petitioner.

10.2. Needless to say, a speaking order will be passed by respondent No.1; a copy of which will be provided to the petitioner.

11. The Writ Petition is disposed of in terms of the abovesaid directions. Resultantly, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
Hosur (South), Hosur.

2. The Secretary to Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.

+1cc to the Special Government Pleader Sr.9954
+1cc to Mr.J.Shankarraman, Advocate Sr.9755

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