IN THE HIGH COURT OF JUDICATURE AT MADRAS

16.06.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Writ Petition No.15206 of 2017

and

WMP No.16486 and 16487 of 2017

Tvl. PESCO BEAM Environmental Solutions Pvt. Ltd.,
rep. By its Managing Director
Mr.A.Subramanian
Survey No.147/4D, 4E, 4F, 4G, 136,
Thodukadu Village,
Sriperumbudur - 602 105.

.. Petitioner

-vs-

The Assistant Commissoner (CT),
Kilpauk Assessment Circle,
F-50, First Avenue, 3rd Floor,
Anna Nagar, Chennai - 102.

.. Respondent

Prayer: Petition filed under Article 226 of The Constitution of India praying for the issuance of Certitiorarified Mandamus calling for the records on the files of the respodnent proceedings in TIN/33281121888/2014-15 dated 02.01.17 and also the rejection order passed in the petition filed u/s 84 of the TNVAT Act dated 16.05.17 and quash the same being illegal invalid without authority of law and violated the principles of natural justice and direct the respondent to re-do the assessment in accordance with law for the assessment year TIN/2014-15.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.Kanmani Annamalai, AGP

O R D E R

W.M.P.No.16486 of 2017 filed seeking a dispensation of the production of the original order of the respondent dated 02.01.2017 and is ordered.

2. This Writ Petition challenges an order of assessment passed in terms of the Tamil Nadu Value Added Tax Act (in short, Act), dated 02.01.2017 read with an order of rectification under Section 84 of the Act dated 16.05.2017 and seeks a direction for re-doing the assessment for the period 2014-15 in accordance with law.

3. Heard Mr.D.Vijayakumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned AGP, appearing for the respondent.

4. By consent of both parties, the Writ Petition is taken up for hearing and disposal at the stage of admission.

5. The main contention of the learned counsel for the petitioner is that the impugned order dated 16.05.2017 has been passed without affording an opportunity and hence, the same is in violation of the principles of natural justice.

6. An order of assessment for the period 2014-15 came to be passed on 02.01.2017 by the Assessing Officer that was challenged before this Court in W.P.14929 of 15. The Writ was allowed setting aside the same and directing the respondent to pass orders afresh in accordance with law.

7. Against the consequent order of assessment, the Petitioner filed W.P.No.2680 of 2017 that came to be dismissed as withdrawn by order dated 03.03.2017.

8. Pursuant thereto, the petitioner filed a petition for rectification under Section 84 of the Act. The said petition came to be disposed of by means of the impugned order dated 16.05.2017 rejecting the petition and confirming the order of assessment, passed originally.

9. One of the issues in assessment relates to a claim under Section 19(11) of the Act in connection with Input Tax Credit (in short 'ITC') that, according to the respondent, was belated, beyond the period of 90 days. The petitioner has specifically, prior to the completion of the impugned proceedings, filed a written statement dated 28.03.2017 enclosing the tax return of the seller for the period upto March 2017 that does not reflect any purchases by the petitioner.

10. In the light of this, the petitioner claims that the ITC claimed was in order and within time, since the seller has remitted the tax only post 2014 April. This specific aspect of the matter has not been either noticed or adverted to by the Assessing Officer. In fact, the Assessing Officer merely goes on the basis of the initial objections that were put forth by the petitioner and rejected.

11. The impugned order of rectification dated 16.05.2017 read with Assessment Order dated 02.01.2017 is, thus, set aside and the matter is remanded to the file of the Assessing Officer to be re-done on the issue relating to the claim under Section 19(11) of the Act. The petitioner will appear before the Assessing Officer on 12.09.2017. If, for any reason, the Assessing Officer is not in a position to hear the matter on the aforesaid date, a date proximate to the said date, shall be fixed for hearing and the matter be decided within a period of six (6) weeks from the date of hearing, after affording due opportunity to the petitioner.

12. The Writ Petition stands allowed leaving the parties to bear their own costs. Consequently, the connected Miscellaneous Petition stands closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissoner (CT),

Kilpauk Assessment Circle,

F-50, First Avenue, 3rd Floor,

Anna Nagar, Chennai - 102.

+1 CC to Mr.D. Vijayakumar, Advocate sr 42651

+1 Cc to Spl. Govt. Pleader(T) sr 42707.

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SCD(CO)

sp(31/08/2017)