IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2017

Coram:

The Hon'ble Mr. Justice T.S. Sivagnanam

W.P.Nos. 25593 & 25594 of 2017
and
W.M.P.Nos.26985 & 26986 of 2017

M/s. Suryadev Alloys and Power Private Limited,
rep. by its Director Govind Gagoria,
Survey No.298/2, Gummidipoondi Taluk,
New Gummidipoondi.

...Petitioner in both the W.Ps

Versus

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
No.38, II Floor, G.N.T. Road,
Gummidipoondi 601 201.

...Respondent in both the W.Ps

Writ Petition No.25593 of 2017 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in CST 845728/2012-13, dated 07.07.2017, and quash the same as illegal, contrary to the provisions of the Act and direct the respondent to grant exemption on sales made against Form H, High Sea sales under bond transfer and give credit for tax payment of Rs.1,09,06,015/- paid on 18.09.2015.

Writ Petition No.25594 of 2017 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in CST 845728/2013-14, dated 14.06.2017, and quash the same as illegal, contrary to the provisions of the Act, and direct the respondent to grant exemption on sales made against Form H, and give credit for tax payment of Rs.3,03,060/- paid on 18.09.2015.

For Petitioner in both the W.Ps : Mr. T. Pramodkumar Chopda

For Respondent in both the W.Ps : Mr. S. Kanmani Annamalai, Additional Govt. Pleader

C O M M O N   O R D E R

Heard Mr. T. Pramodkumar Chopda, the learned counsel appearing for the petitioner, and Mr. S. Kanmani Annamalai, the learned Additional Government Pleader appearing on behalf of the respondent. With the consent on either side, both the Writ Petitions are taken up for disposal.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of both the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as "TNVAT Act") and the Central Sales Tax Act, 1956 (hereinafter referred as "CST Act") has filed these Writ Petitions, challenging the orders of assessment for the years 2012-2013 and 2013-14 respectively.

3. Earlier, the Assessing Officer completed the assessment, and passed an order, dated 31.07.2005, disallowing the various claims made by the petitioner. The petitioner filed Applications under Section 84 of the TNVAT Act, 2006, for rectifying the errors in the orders. The Applications were rejected. The petitioner challenged the orders of rejection, by filing a Writ Petition before this Court. This Court directed the petitioner to file a Revision Petitions before the Joint Commissioner (CT), Chennai (North). Accordingly, the Revision Petitions in R.P.Nos.91 and 92 of 2016 filed before the Joint Commissioner (CT) were allowed, by order, dated 06.03.2017, and the matters were remanded to the respondent/Assessing Officer for fresh consideration. Pursuant to such remand orders, the impugned orders have been passed.

4. After considering the submissions on either side and carefully perusing materials placed on record, this Court is convinced to say that, serious error has occurred in the decision making process. This is so, because, on remand, the respondent did not issue any Show Cause Notice. Unless, the respondent had issued a Show Cause Notice, disclosing his mind as to how he proposed to re-assess the petitioner, the petitioner could not have submitted an effective objection. Nevertheless, the petitioner submitted objections, dated 14.03.2017, enclosing documents relating to export sales, and produced four Form 'H' Declarations. The petitioner stated that, if the respondent wanted any further documents, clarification, explanation, they are ready to provide the same. Since the petitioner lost substantial time before he could file the Revision Petition, they were compelled to pay a sum of Rs.1,09,06,015/- and Rs.3,03,060/- on 18.09.2015.

4. I find that, the amount remitted by the petitioner has not been reckoned or adjusted in the impugned orders. As I pointed out earlier, without issuing proper Show Cause Notice, the respondent could not have reopened the assessments. However, the respondent, while rejecting the Form 'H' Declarations, pointed out certain defects. If the petitioner has produced certain Declaration Forms, which are defective in nature, proper course would be to return the Forms for re-presentation, for rectification of defects. This alone will satisfy the principles of natural justice, and will be in accordance with the Circulars issued by the Commissioner. Secondly, with regard to quantity of Steel imported by the petitioner, viz., 3,000 metric tonnes, the petitioner has sold 2,500 metric tonnes on high sale purchase by five purchasers. Remaining 500 tonnes have been retained by the petitioner for their own purpose. The respondent has refused to believe the nature of transaction, stating that, because the petitioner has sold the goods on a piecemeal basis. It is nothing but transfer of title to the goods, on which, the ownership ceased. Unfortunately, there was no such proposal given to the petitioner, to show cause as to why such allegations are false, and unless and until, such an allegation was put forth to the petitioner, the petitioner would not have been in a position to submit their objections/explanation.

5. Thus, as pointed out earlier in the preceding para, the procedure adopted by the respondent is flawed. For all the above reasons, the impugned orders are liable to be set aside.

6. Accordingly, both the Writ Petitions are allowed and the matters are remanded to the respondent for fresh consideration. The respondent is directed to issue a notice, clearly indicating as to how he proposes to re-assess the petitioner. Along with the notice, the respondent shall return the defective Form 'H' Declarations, and on receipt of the notice, the petitioner is granted 30 days' time to subject their objections along with rectified Form 'H' Declarations. On receipt of the same, the respondent shall afford an opportunity of personal hearing to the petitioner, and redo the assessment in accordance with law. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrr/sd

To

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
No.38, II Floor, G.N.T. Road,
Gummidipoondi 601 201.

+1 cc to M/s.T.Pramodkumar Advocate sr 70452
+1 cc to spl Govt Pleader Taxes sr 70733

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aa23/10/2017