IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.25611 to 25614 of 2017 and
W.M.P.Nos.26999 to 27002 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 all WPs

Vs.

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

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the respondent in TIN:33921702760/2010-11, TIN:33921702760/2011-12, TIN:33921702760/2012-13, TIN: 33921 702760/2013-14 respectively dated 28.08.2017 and quash the same as illegal, contrary to the provisions of the Act and order passed in petitioner's W.P.Nos.15535 to 15538 of 2016 dated 28.06.2016.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr.T.Pramodkumar Chopda, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent. With the consent on either side, the writ petition is taken up for disposal.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed these writ petitions challenging the assessment orders for the years 2010-2011 to 2013-2014. In so far as the assessment for the year 2013-2014 is concerned, the Assistant Commissioner (CT), Gummidipoondi Assessment Circle accepted the stand taken by the petitioner in so far as the stock transfer of goods to outside branches and dropped the proposal for reversal of ITC, as proposed by him in his Revision notice dated 01.12.2016. However, in respect of the impugned assessment orders, the petitioner was not successful before the respondent/Commercial Tax Officer.

3.The background facts which are required to be reiterated that the petitioner approached this Court earlier by filing W.P.Nos.15535 to 15538 of 2016. In the said writ petitions, the petitioner challenged the assessment orders passed by the respondent for the very same assessment years viz., 2010-2011 to 2013-2014. The only point which was agitated before the Writ Court was with regard to the reversal of Input Tax Credit for stock transfer covered by Form F. With regard to the other issues, the petitioner stated that they will file an appeal before the Appellate Authority. The Court took into consideration the amendment to the Tamil Nadu Value Added Tax Act, 2006 by notification in G.O.(Ms)No.18, Commercial Taxes and Registration (B1) Department, dated 29.01.2016 whereby a separate column was given in Annexure 12 for Stock Transfer/Consignment sales without Form F - Section 19(2). This having not been brought to the Assessing Officer, the Court sets aside the reversal of Input Tax Credit reversal for Stock Transfer covered by Form F and remanded the matter to the respondent for fresh consideration.

4.It goes without saying that the proposal for imposition of penalty on the said reversal also is deemed to have been set aside because the matter has been remanded to the respondent for fresh consideration. On such remand, the respondent issued notice dated 07.02.2017 calling upon the petitioner to produce various details. I find in the said notice, there is no proposal to levy penalty. The petitioner appeared before the respondent on 21.02.2017 and 27.02.2017 produced various records and statements were also recorded from the authorised signatory of the petitioner. The petitioner is stated to have furnished the details of the M.S.Billets (Imported), M.S.Billets used for General Production, QST Rebars (Imported) Production, QST Rebars General Production etc. These details have been submitted in a tabulated form and the sample copies of which have been enclosed in pages 9 to 38 of the typed set of papers. On receipt of the details, it appears that the respondent made a fact finding exercise, but not being satisfied with the manner in which the records were furnished, issued notice dated 24.04.2017. I have accepting the fact that the petitioner was furnished details and on verification, he has noticed certain issues and therefore, directed the petitioner to furnish the details in seven separate statements. In fact, the respondent has in the said notice clearly given the manner in which the statement has to be drawn. This effort of the respondent requires to be appreciated. The petitioner, on receipt of the final notice dated 24.04.2017, has produced the corrected statement in the format, as directed to be given by the respondent. Having made such an exercise, in the considered view of this Court, the respondent could have taken little more effort to call the dealer for any clarifications if he had on the revised statement which they have furnished. However, while completing the assessment, by passing the impugned assessment orders, the respondent, after reiterating the earlier factual position, has stated that the petitioner cases cannot be accepted as they have not established the same beyond doubt and they have furnished incomplete and incorrect details. In my view, if the petitioner was not initially satisfied with the records which were produced before him and subsequently wanted corrected statement, the petitioner could have been called upon to appear in person for one more occasion and clarification could be sought for. If the said procedure has been followed, the impugned order could have been avoided.

5.At this juncture, it is worthwhile to mention that identical transaction was examined by the Assistant Commissioner (CT), Gummidipoondi Assessment Circle for the assessment year 2014-2015 and has passed an order dated 17.03.2017 accepting the petitioner stand and dropping the proposal for reversal of Input Tax Credit on Stock Transfer of goods to outside the State branches. Though this order is a subsequent development, this also can be taken note of by the respondent.

6.With regard to the levy of penalty is concerned, it is seen that the entire turnover has been culled out from the books of accounts and the petitioner has been called upon to furnish the details which the petitioner has promptly complied with. Further, as pointed out in the preceding paragraphs after the earlier order in W.P.Nos.15535 to 15538of 2016 dated 28.06.2016, the reversal of ITC as well as the imposition of penalty had been set aside and the matter remanded to the respondent. Therefore, if the respondent opined that the penalty should be levied, there should have been a proposal to the said effect. Be that as it may, it has to be seen as to whether it is a case where penalty could have been imposed under Section 27(4) of the Act. There is no allegation that the petitioner has wilfully failed to disclose the assessable turnover or the conduct of the dealer was contemporaneous with an intent to develop the revenue or to somehow avoid payment of tax. Unless these ingredients are established, the question of levy of penalty does not arise. Therefore, to that extent, this Court is fully convinced that the levy of penalty under Section 27(4) is not conferred.

7.In the result, these Writ Petitions are allowed and the impugned orders are set aside in its entirety and the matter is remanded to the respondent for fresh consideration with a direction to call upon the petitioner to appear in person and explain the incongruity of the transaction and after obtaining the explanation, the respondent is directed to redo the assessment in accordance with law. So far as the penalty is concerned, since this Court has rendered a finding that it is a case where Section 27(4) could not have been invoked, the levy of penalty is set aside in full and on remand, the respondent cannot initiate fresh proceedings for levy of penalty. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Sgl

To

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

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.71740
+1cc to the Spl. Government Pleader(Taxes), S.R.No.71761

W.P.Nos.25611 to 25614 of 2017

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