IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.15793 of 2017
and
W.M.P.No.17082 of 2017

Forech India Private Limited,
1, Sipcot Industrial part,
Cholavaram post,
Vembakkam Taluk, Cheyyar,
Thiruvannamalai District,
Tamil Nadu- 631 701. .. Petitioner

..Vs..

1. Commercial Tax Officer,
Vandavasi, Assessment Circle,
43/41, Sannathi New St.,
Vandavasi-604 408,

2. The Commissioner of Commercial Taxes,
Chepauk, Chennai -600 005.

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the Impugned Order passed by the first respondent in CST No.377456/2015-2016 dated 15.05.2017 and quash the same.

For Petitioner : M/s.R.Charulatha

For Respondents: Mr.S.Kanmani Annamalai,
Additional Government Pleader.

ORDER

Heard M/s.R.Charulatha, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondents. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and Central Sales Tax Act, 2006 (CST Act). The order impugned in this writ petition is an order of assessment under the CST Act for the year 2015-2016. The first respondent issued a notice dated 27.03.2017 on scrutiny of the petitioner's monthly returns for the year 2015-2016 under the CST Act. On perusal of the returns, the first respondent pointed out five issues and proposed to assess the petitioner under several heads such as interstate sales covered by C forms, not covered by C forms, without C forms, Stock Transfer, Export sales and Sales to Exporter under Section 5(3) of the CST Act. The petitioner was granted 15 days time to file their objection. On receipt of the notice, the petitioner submitted their reply dated 10.04.2017. Among other things, they pointed out that the non-submission of the Forms is purely attributable to the bona fide reasons of non-issuance of the said Forms by the customers concerned as the customers have not received the said Forms from the statutory authorities of their respective States. Therefore, it is stated that the non-submission of the statutory forms is not attributable to the petitioner. After referring to several decisions on which they placed reliance, they sought for dropping the proceedings initiated vide notice dated 27.03.2017; grant further time for submission of remaining C Forms; and grant an opportunity of personal hearing.

3.The first respondent Assessing Officer has taken note of the reply and the 'C' Forms, 'H' Forms and 'F' Forms which were filed along with the reply dated 19.04.2017 and without taking note of the request made by the petitioner for grant of extension of time to file the 'C' Forms and without affording an opportunity of personal hearing has completed the assessment. Time and again this court has held that when the complicated questions of fact are involved, the Assessing Authority should afford an opportunity of personal hearing to the dealer and more so when the dealer has made such a specific request as in the instant case. This is sufficient to hold that the impugned order is in violation of principles of natural justice and therefore this writ petition is entertained.

4.The learned Counsel for the Petitioner would submit that reasonable time may be granted to the petitioner to submit the remaining C Forms and to show the bonafides of her client, the learned counsel referred to the copies of the e-mail correspondence between the petitioner and their customers, wherein they have requested for early submission of the 'C' Forms.

5.For the above reasons, the Writ Petition is allowed and the impugned order insofar as it has completed the assessment with regard to interstate sale without 'C' Forms wherein the turnover has been determined as Rs.71,43,558/- is set aside and the matter is remanded to the first respondent for fresh consideration. Considering the submission made by the learned counsel for the petitioner, they are granted two months time from the the date of receipt of a copy of this order to produce the 'C' Forms before the Assessing Authority and on production of 'C' Forms and after due verification, the Assessing Officer is directed to re-do the assessment under the said head. Till the Forms are produces within the time permitted, the first respondent shall not initiate any coercive steps to recover the tax at the higher rate as mentioned in the impugned order of assessment.

6.The writ petition is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rkp
To
1. The Commercial Tax Officer,
Vandavasi, Assessment Circle,
43/41, Sannathi New St.,
Vandavasi-604 408,
2. The Commissioner of Commercial Taxes,
Chepauk, Chennai -600 005.
3. The Secretary, Government of Tamil Nadu,
Commercial Taxes Department,
Fort St.George, Chennai -600 009.
+ 1 cc to Mr.Lakshmi Kumaran, Advocate Sr.48935
+ 1 cc to the Special Government Pleader Taxes, Sr.49438

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BR(CO)
EU 8.08.17