IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.16414 and 16415 of 2017
and
W.M.P.Nos.17755 and 17756 of 2017

Tvl.SPX Thermal Equipment and Services India Pvt.Ltd.,
rep.by its P.A.Holder R.Shridhar,
Apex Plaza, 3rd Floor,
No.3, Nungambakkam High Road,
Nungambakkam, Chennai-600 034. .. Petitioner in both W.Ps.

Vs

1. The Assistant Commissioner,
   Valluvarkottam Assessment Circle,
   No.10, Palaniyappa Maligai,
   4th Floor, Greams Road,
   Chennai-600 006.

2. The Commissioner of Commercial Taxes,
   Ezhilagam, Chennai-600 005. .. Respondents in both W.Ps.

W.P.No.16414 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent proceedings in CST/1219437/2015-16 dated 30.05.2017 and quash the same being illegal, invalid, without jurisdiction and violative of the principles of natural justice and contrary to the principles laid down by this Court and direct the first respondent to issue separate notices for framing assessment under TNVAT Act (TIN) and CST Act as per the petitioner's request letter dated 04.05.2017.

W.P.No.16415 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent proceedings in CST/1219437/2015-16 dated 30.05.2017 and quash the same being illegal, invalid, without jurisdiction and violative of the principles of natural justice and contrary to the principles laid down by this Court and direct the first respondent to issue declaration forms in 'E II' as per the petitioner's request letters dated 18.04.2017 and 03.05.2017.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2. The petitioner is a multinational company incorporated under the Companies Act, having its registered office in Chennai and they are the registered dealer on the file of the respondents under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short) and Central Sales Tax Act, 1956 ("CST Act" in short). The petitioner is before this Court challenging the order of assessment under the CST Act for the year 2015-2016.

3. At the first instance, on a perusal of the impugned order, it appears to be an elaborate order, as it is a 19-page order. On a closer scrutiny, it appears that the petitioner is aggrieved by only a few issues which are in the opinion of the dealer, are mistakes which has crept in, in the assessment order and thus the mistakes are apparent on the face of the record. To demonstrate one such mistake, the learned counsel for the petitioner has drawn the attention of this Court to Page No.115 of the typed set of papers which is the revised annual return for the year 2015-2016. The learned counsel for the petitioner submitted that during the personal hearing, it was explained to the assessing officer that the mistake has occurred while preparing the tabulated statement as the entries pertaining to the Sales Invoice No.TN/I.005/008 dated 31.03.2016 has been inadvertently shown below the Sales Invoice No.TN/I.005/007 dated 04.01.2016 and in spite of having explained these details to the assessing officer, the same was not taken into consideration and the mistake pointed out was not rectified. Further, it is submitted that the first respondent originally rejected the petitioner's claim of exemption and concessional rate for want of 'C' Declaration forms and the cause of action for the assessment order dated 08.02.2017 under the CST Act for the year 2015-2016. In the said proceedings, the first respondent levied higher rate of tax for non-production of 'C' Declaration forms and subsequently, the petitioner filed 'C'

Declaration forms and requested the assessment to be revised vide their representations dated 27.03.2017 and 03.04.2017. This Court had directed the first respondent to pass orders on the representations within a time frame. Along with the order copy, the petitioner is stated to have been produced the original 'C' Declaration forms on 17.04.2017 and on the same day, the first respondent issued a notice expressing his unwillingness to accept the declaration forms citing certain rules and notifications and granted time till 26.04.2017 for personal hearing. The petitioner is stated to have appeared on the said date and produced the documents and given their explanation for non-production of the declaration forms earlier, but no orders were passed by the first respondent in spite of the direction issued by this Court. Thus the petitioner would state that error has crept in, in the impugned assessment order since the first respondent has not complied with the order passed by this Court in its letter and spirit.

4. In the counter affidavit filed by the respondents, the respondents in paragraph-9 have denied the allegation made in Ground 'b' of the writ affidavit stating that such a stand is taken up for the first time before the Court and it is an afterthought and has given some reasons as to why the details do not match with the value of the 'C' Declaration forms and if the petitioner is aggrieved by the reason, they can very well avail the appellate remedy available under the Act. With regard the averments contained in Ground 'c' of the Grounds of the writ petition, as regards the order and direction issued in W.P.Nos.8391 and 8392 of 2016 dated 07.04.2017, the respondents have not made any specific denial in the counter affidavit and they have not even referred to those averments. Thus, in the considered opinion of this Court, the petitioner should be permitted to go before the assessing officer for filing a petition under Section 84 of the TNVAT Act and the assessing officer has to consider such petition by affording an opportunity of personal hearing and decide the matter in accordance with law without being solely influenced by whatever observations made by the first respondent in the impugned assessment order.

5. In the light of the above, the writ petitions are disposed of by directing the petitioner to file a petition under Section 84 of the TNVAT Act within a period of fifteen days from the date of receipt of a copy of this order. On receipt of such petition, the respondents are directed to afford an opportunity of personal hearing and pass a speaking order on merits and in accordance with law in respect of the issues which are raised by the petitioner in the said petition filed under Section 84. In

the light of the above direction issued and also taking note of the fact that a sum of Rs.18 lakhs has already been recovered by bank attachment, the bank attachment shall stand raised. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Assistant Commissioner,
   Valluvarkottam Assessment Circle,
   No.10, Palaniyappa Maligai,
   4th Floor, Greams Road,
   Chennai-600 006.

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

+1cc to Mr.D.Vijayakumar, Advocate, S.R.No.54198
+1cc to the Government Pleader, S.R.No. 54845

W.P.Nos.16414 and 16415 of 2017
and
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AR(CS V)
CS/03/08/17