IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.17624 and 17625 of 2017
and W.M.P.Nos.19120 and 19121 of 2017

M/s.S.S.Scrap Traders,
Represented by its Proprietor
Mr.A.Mohammed Ismail
210-C, Chennai Salai
L.N.Puram, Punruti - 607 106. ... Petitioner

vs

The Commercial Tax Officer,
Punruti (Rural) Assessment Circle,
Commercial Taxes Building,
Kumbakonam Salai
Near Taluk Office, Punruti 607 06. ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue any writ or order or direction most particularly in the nature of Certiorari and call for the records pertaining to the impugned assessment order dated 29.04.2016 in TIN:33714500889/2014-2015 passed by the respondent and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard. Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. With the consent on either side, the writ petitions themselves have been is taken up for disposal.

2.The petitioner is before this Court challenging an order of assessment dated 29.04.2016 in the year 2014-15 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the order dated 16.06.2017 passed on an application filed under Section 84 of the TNVAT Act. The respondent issued a notice dated 23.03.2015 alleging that on verification of import data collected from the Departmental website, it was noticed that the petitioner has imported iron and steel during the year 2014-15. After furnishing the PAN numbers in respect of two transactions, it was alleged that the petitioner has not accounted for such purchases in their accounts and declared the corresponding sales to the Department and therefore, proposed to assess the sale as actual sales suppression. There was also a proposal to levy penalty at 150% of the tax due. The petitioner was granted time to submit their objections. The petitioner submitted their objections stating that they have not effected any purchase and sales for the period 2014-15. Inspite of the objections, the respondent opined that there is no possibility of misuse of import other than the importer. Therefore rejected the objections raised by the petitioner and confirm the proposal in the notice dated 23.03.2015. Thereafter, the petitioner approached the Customs Department by filing an application under the Right to Information Act seeking information with regard to the details of imports including the metal steel scraps by the petitioner in IEC No.2509000268 during the financial year 2013-14 and 2014-15. The Information Officer of the Customs Department, by reply dated 24.10.2016, informed the petitioner that during the relevant period in respect of the said IEC code number, there was no imports.

3.Armed with the reply received under the RTI Act, the petitioner submitted a representation to the respondent enclose the copy of the reply received from the Customs Department and sought for revision of assessment under Section 84 of the TNVAT Act. This Petition has been rejected on the ground that the import data received from CPIO is with reference to PAN No.AWJPM5413E and the reply received from the Customs Department is with regard to the Import and Export Code No.2509000268 and it is with reference to a different PAN number. Admittedly, the assessment was sought to be revised based on the information collected from the Departmental website. Therefore, the petitioner should have been furnished with full details as to the period during which the import was effected, the import code number, the commodity code number, etc. However, no such details was furnished when the show cause notice dated 23.03.2015 was issued. Though the petitioner stated that they have not effected any import, the respondent did not believe with the stand. Therefore, the petitioner approached the Customs Department and obtained information under RTI Act and approached the respondent for revision of assessment under Section 84 of the TNVAT Act. The petitioner while seeking for information from the Customs Department has referred to the Import Export Code. The import export code is assigned to an importer and there can be no two same code numbers. The PAN number of an importer is an additional detail which will be furnished. Therefore, at the first instance, verification should be done if the Import Export Code number and if there is a difference in the same, then it would mean the import has been effected by certain other their parties and not the petitioner. However, the respondent appears to have not done such an exercise but has directed the petitioner to prove the negative which is not possible to do. Therefore, the respondent ought to have embarked upon an independent exercise by verifying with the Customs Department and then confronting the petitioner with the information that he may obtain. Without doing so, rejection of the petition under Section 84 of the TNVAT Act by stating that the PAN number is different is incorrect. Therefore, the order passed dated 16.06.2017 calls for interference and however, at this stage, this Court is not inclined to set aside the assessment order dated 29.04.2016 as it has merged with the order dated 16.06.2017.

4.For the above reasons, the writ petitions are partly allowed and the order dated 16.06.2017 is set aside and the matter is remanded to the respondent for fresh consideration who shall cause verification from the Customs Department based on the information furnished by the petitioner and after obtaining such information, issue a notice to the petitioner, permit them to give their objections and pass a fresh order on merits and in accordance with law in the application filed by the petitioner under Section 84 of the TNVAT Act. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Punruti (Rural) Assessment Circle,
Commercial Taxes Building,
Kumbakonam Salai
Near Taluk Office, Punruti 607 06.
+1cc to the Special Government Pleader (Taxes) Sr. 48685
+1cc to Mr.Hari Radha Krishnan, Advocate Sr. 49252

W.P Nos.17624 and 17625 of 2017

SJ(CO)
VR(02/08/2017)