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.17685 and 17686 of 2017
and W.M.P.Nos.19187 and 19188 of 2017

M/s.Zimmer India Pvt. Ltd.,
represented by its C & F Agent,
No.4, Bazulla Road, II Floor,
T.Nagar, Chennai - 600 017. ... Petitioner in both the wps

vs

1. The Assistant Commissioner (CT),
   Pondy Bazaar Assessment Circle,
   Chennai.

2. The Branch Manager,
   M/s.Hong Kong and Sanghai Banking Corporation,
   Chennai Branch,
   Royapettah, Chennai - 600 004. ... Respondents in both wps

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari or any other appropriate writ, direction or order calling for the records of the first respondent in his proceedings in CST: 785971/2014-15, quash the assessment order dated 29.07.2016. and 28.04.2017 respectively

For Petitioner : Mr.R.L.Ramani, Senior Counsel for Mr.B.Raveendran

For Respondents : Mr.K.Venkatesh Government Advocate (For R1)

COMMON ORDER

Heard. Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the first respondent. With the consent on either side, the writ petitions themselves have been taken up for disposal.

2.The petitioner who is the registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act) has filed these writ petitions challenging an order of assessment under the CST Act for the year 2014-15 and the consequential notice attaching the petitioner's Bank Account for recovery of the tax as computed in the impugned assessment order. Though the relevant assessment year is 2014 - 2015, the first respondent had issue a notice only on 09.06.2016 calling upon the petitioner to file C Forms within a period of 15 days failing which proposed to complete the assessment by assessing the transaction to a higher rate of tax. The petitioner's case is that on account of the floods, the entire office premises was inundated and they could not filed objections to the notice dated 09.06.2016. This resulted in an order dated 29.07.2016 computing the total tax payable by the petitioner. On receipt of the said order, the petitioner submitted a representation on 03.03.2017 enclosing about 131 C Forms and 28 F Forms. Further, it was submitted that there is a delay in submitting the Forms due to the damage caused by heavy floods and their godown of the building was fully flooded and they are in the process of collecting the balance Forms and requested a months time to enable them to submit those Forms. After waiting for nearly a month the respondent has passed the impugned assessment order dated 28.04.2017, after due credit to C Forms and F Forms produced by the petitioner and complete the assessment.

3.The learned senior counsel appearing for the petitioner would submit that so far as the inter-state sales not covered by the C Forms, the Assessing Officer has assessed the transaction at a higher rate of tax at 5% and in respect of the claim for exemption on stock transfer, the same has been disallowed for want of declaration Forms. It is submitted that the petitioner has taken effective steps to obtain duplicate F Forms and may be granted reasonable time to produce the same as the procedure to obtain duplicate Forms is a cumbersome procedure. Therefore, the learned senior counsel would state that the impugned attachment order may be lifted and the Assessing Officer may be directed to grant reasonable time to produce the remaining C Forms and F Forms.

4.The learned Government Advocate appearing for the first respondent submitted that inspite of granting sufficient time as requested by the petitioner, the petitioner has failed to produce the entire Forms and therefore, there is no error in the order passed by the respondent in completing the assessment and if the petitioner is aggrieved, they should file an appeal against the impugned order.

5.After hearing the learned counsels for the parties and carefully perusing the materials placed on record, it is seen that the major component of tax due is on account of the rejection of claim for exemption on stock transfer for want of declaration Forms. The petitioner's case is that original Forms have been fully destroyed in the floods and they are in the process of collecting the duplicate Forms and procedure to obtain the duplicate Forms is a cumbersome procedure. However, there is no material before this Court to show that as to what steps have been taken by the petitioner to secure the duplicate F Forms. However, considering the fact that the assessment was completed by an order dated 29.07.2016. The petitioner has produced substantial proof of Forms and the Assessing Officer also given due credit to the said Forms. Therefore, I am of the view that it is not a case of lack of bonafide but appears to be a genuine difficulty. For that reason, this Court is inclined to issue appropriate directions to be complied with by the petitioner and simultaneously safeguarding the interest of the Revenue.

6.In the light of the above, the writ petitions are disposed of with the following directions:

1) The petitioner is directed to pay a sum of Rs.1,36,005/- being the tax payable for the interstate sale not covered by C Forms;
2) The petitioner is also directed to pay a sum of Rs.1,09,640/- being the tax payable for the sales return which was disallowed for want of proof.
3) After remitting the said amount, the petitioner is directed to submit a representation to the first respondent showing the proof that they have taken steps to obtain the duplicate F Forms declaration;
4) If such representation is filed with adequate proof of steps being taken, the first Respondent/Assessing Officer shall consider the representation and grant three months time from the date of receipt of the representation to produce the F Forms;
5) In the event, the petitioner is unable to produce the F Forms within the said three months period, the first respondent is entitled to recover the tax payable by the petitioner to the tune of Rs.71,95,800/-; and
6) In the light of the above order, the first respondent is directed to lift the bank attachment and the petitioner is directed to file a personal bond for the full value of Rs.71,95,800/- and keep the bond alive till the production of F Forms as per the above directions.

7.With the above directions, this writ petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rna

To

1. The Assistant Commissioner (CT),
   Pondy Bazaar Assessment Circle,
   Chennai.

+1cc to Mr.B.Raveendran,Advocate in sr.no.48716
+1cc to Special Government Pleader in sr.no.48682

W.P Nos.17685 and 17686 of 2017

RK(CO)
NR 13/07/2017