IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGANANAM

W.P.No.27972 of 2017
and
W.M.P.Nos.30021 & 30022 of 2017

M/s. M.V.M.Perfect Tool Makers Pvt. Ltd.,
Rep.by its Managing Director R.Mahendran,
86/69, P.K.M. Road,
Athipet, Chennai - 58. ... Petitioner

Vs.

The Commercial Tax Officer,
Nolambur Assessment Circle,
Villivakkam, Chennai - 49. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorari, calling for the records of the respondent in his proceedings' in TIN No.33251348157/2015-16 dated 01.09.2017 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Governement Advocate appearing for the respondent. With the consent on either side, the writ petition 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 the Central Sales Tax Act, 1956 (CST Act). In this writ petition, the petitioner has challenged the order of assessment dated 01.09.2017 for the assessment year 2015-16. After elaborately hearing the learned counsels on either side and perusing the materials placed on record, this

Court would observe that if an opportunity of personal hearing had been granted to the petitioner, this very litigation could have been avoided. This Court is convinced to say so on account of the four issues which arise for consideration in the impugned assessment order. They being:-

1. Excess claim of ITC arrived at on the scrutiny of monthly returns with departmental website;
2. Difference in purchase between Form WW and profit and loss account;
3. Labour charges; and
4. Zero rated sales.

3.Insofar as the first issue is concerned, though the proposal in the revision notice dated 05.06.2017 proposed to reverse the excess ITC claim of Rs.5,76,113/-, on production of the materials by the petitioner the respondent has accepted substantial amount of the material and reversed only a sum of Rs.1,75,695/-. This is on the ground that the petitioner has purchased from unregistered dealer; the proof of document not filed, purchase of iron and steel for own use of building construction etc., not eligible for ITC. The petitioner's case is that they have sufficient documents to prove the genuineness of the transaction on an opportunity of personal hearing being granted to the petitioner, in all probabilities, the dispute would have been resolved.

4.Similarly, with regard to the other three issues also, the petitioner has sufficient documents to establish their case. Insofar as the zero rated sales are concerned, the petitioner initially produced certificate from the Wind Power Company, in which, they have referred to the letter of permission given by the Development Commissioner, MEPZ, Chennai. However, the petitioner was not called upon by the respondent to produce the certificate issued by the Development Commissioner while issuing the show cause notice dated 05.06.2017. The petitioner has now secured the copy of the certificate issued by the Development Commissioner dated 06.08.2013 which shows that the Company for which works have been done by the petitioner is a SEZ. Thus, this Court is of the clear view that if one more opportunity is granted to the petitioner with liberty to produce the necessary documents, the entire controversy could have been solved.

5.The learned Government Advocate, on instructions, would submit that whenever documents were available, the Assessing Officer has granted the relief.

6.In the result, the writ petition is partly allowed and the finding rendered by the respondent in the impugned assessment order under the four heads, viz., (1) excess claim of ITC arrived at on the scrutiny of monthly returns with departmental website; (2) difference in purchase between Form WW and profit and loss account; (3) labour charges; and (4) zero rated sales are set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing to the authorized representative of the petitioner within a period of fifteen days from the date of receipt of a copy of this order and during the personal hearing, the respondent shall peruse all the records produced by the petitioner and re-do the assessment under the above mentioned four heads in accordance with law. In the light of the above direction, the order imposing penalty is set aside. No costs. Consequently, the connected Miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AT

To

The Commercial Tax Officer,
Nolambur Assessment Circle,
Villivakkam, Chennai - 49.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.78324
+1cc to the Special Government Pleader(T), S.R.No.78477

W.P.No.27972 of 2017
and
W.M.P.Nos.30021 & 30022 of 2017

AR IV
CA(08/11/2017)