IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

Writ Petition No.19386 of 2017
and W.M.P.No.20895 of 2017

M/s. Dalmia Laminators Ltd.,
Represented by its Commercial Manager /
Authorised Signatory,
No.89-93, 104 SIPCOT Industrial Estate,
Gummidipoondi 601 201 ... Petitioner

..vs..

The Assistant Commissioner (CT),
Gummidipoondi Assessment Circle,
38 GNT Road, Ganapathy Theatre
Complex II Floor,
Gummidipoondi 601 201 ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in the impugned Order No.TIN/33450920277/2014-15/Para 7251617AA01/AS No.5, dated 20.06.2017 and to quash the same, as it is against the principles of natural justice, since order is passed on a pre-determined basis, without considering the reply and without granting personal hearing.

For Petitioner : Mrs. Radhika Chandrasekhar

For Respondent : Mr.K.Venkatesh,
Govt. Advocate

O R D E R

Heard Mrs.Radhika Chandrasekhar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who accepts notice for the respondent. With consent of the learned counsel appearing for both sides, the writ petition is taken up for final disposal, at the admission stage itself.

2. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act") and the Central Excise Act, 1956, and they have been filing monthly returns within the time stipulated under the respective statutes. The petitioner is engaged in the manufacture of HDPE and PP bags and their goods are sold within the State of Tamil Nadu as well as Interstate. The petitioner also stock transfers the goods to their other branches.

3. The petitioner's case is that they have manufactured goods by purchasing raw materials through interstate sales against Form C declarations and stock transfer the deficiency goods, against all items, to their branches situated outside the state of Tamil Nadu and availed Input Tax Credit. The goods used in the manufacture are sold to the customers inside the state of Tamil Nadu as well as outside the State. The petitioner filed their returns for the assessment year 2014-15 and they were deemed to have been assessed under Section 22(2) of the Act, on 31.10.2015. Subsequently, on verification of the returns, the respondent issued revision notice, dated 26.10.2016, stating that the petitioner had sold / transferred goods in interstate during 2014-15 to unregistered / registered dealers and paid tax at the rate of 0, 2, 5 and 14.5%. However, they have not made any reversal of ITC during the course of business. Accordingly, the respondent proposed to revise the Input Tax Credit of Rs.2,36,46,369/- under Section 27 of the Act and proposed to levy penalty at 50% under Section 27 (3) and (4) of the Act. The petitioner was granted 15 days time from the date of receipt of the notice to submit their objections and was informed that opportunity of being personally heard within the above time limit will be afforded by the respondent.

4. The petitioner submitted their objections dated 15.12.2016, both on merits as well as on as to how penalty cannot be imposed. With regard to the applicability of the proviso to Section 19 (2) (v) of the Act, it was submitted that there is no amendment to Section 19 (2) (ii) of the Act and since the petitioner is a manufacturer availing credit, in terms of Section 19 (2) (ii) of the Act, there is no question of reversal of a specified percentage in respect of the CST sales against C forms.

5. The respondent did not take any action on the reply nor afforded any opportunity of personal hearing and after about five months, a revised revision notice, dated 29.05.2017, was issued. This revised revision notice is identical to that of the revision notice dated 26.10.2016, except for the word "revised" having been added in the notice. The petitioner submitted their objections dated 14.06.2017 and a perusal of

which shows that apart from the objections raised in their reply dated 15.12.2016, certain other aspects have also been dealt with by the petitioner. The petitioner has also relied on various decisions of this Court and the Hon'ble Supreme Court. The objections were served in the Office of the respondent, on 14.06.2017, as could be seen from the endorsement made in the Letter Delivery Book. Though this appears to be the factual position, the respondent did not consider the objections filed to the revised revision notice, but proposed to deal with the earlier reply, dated 15.12.2016 and completed the assessment, without affording an opportunity of personal hearing.

6. The factual position, stated above, clearly shows that whatever proposal was made in the revision notice, dated 26.10.2016, is deemed to have been superseded, as per the revised revision notice, dated 29.05.2017. Therefore, the respondent can adjudicate only the revised revision notice, dated 29.05.2017 and not the earlier notice, dated 26.10.2016. Hence, that being the position, then, obviously, the respondent should have referred to the petitioner's reply, dated 14.06.2017.

7. This, having not been done, amounts to serious violation of principles of natural justice. The fact that the reply, dated 14.06.2017, has been received in the Office of the respondent on 14.06.2017 cannot be disputed by the respondent, as there is an endorsement in the Letter Delivery Book. There is no record produced before this Court to show that the Officer or staff of the respondent, who signed in the Letter Delivery Book was not authorized to do so. Therefore, as long as the respondent / Department continues to adopt this age old practice of giving acknowledgment in Letter Delivery Book, whatever the assessee produce as an endorsement before this Court, the Court will be inclined to accept the same as sufficient proof to show that reply was received in the Office of the Assessing Officer. Therefore, the reply, dated 14.06.2017, having been received in the Office of the respondent, the respondent was duty bound to consider the same and should not have passed the impugned order, without even referring to the said reply.

8. One more aspect that need to be pointed out is with regard to the opportunity of personal hearing. In the revised revision notice, dated 29.05.2017, the respondent has stated that the dealers will be afforded opportunity of being personally heard within the time limit provided for submitting the objections. The manner in which the notice has been worded is incorrect. Opportunity of personal hearing should be afforded, while fixing the date, after the receipt of the objections. This is so, because, if the objections are to the satisfaction of the Assessing Officer, he need not hear the

dealer, while dropping the proposal in the revision notice. However, when objections are being made by the dealer and the dealer specifically seeks for an opportunity of personal hearing, the Assessing Officer is bound to fix the date for personal hearing and intimate the same to the dealer and therefore, on that score also, the impugned order is in violation of the principles of natural justice.

9. For, all the above reasons, the impugned order is liable to be set-aside. In the result, the writ petition is allowed and the impugned order is set-aside and the matter is remanded back to the respondent for fresh consideration, who shall fix the date for personal hearing and hear the authorized representative of the petitioner, in-person, take note of the reply given by them, vide reply dated 14.06.2017 and the legal position pointed out by the petitioner and re-do the assessment in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

srk

To

The Assistant Commissioner (CT),
Gummidipoondi Assessment Circle,
38 GNT Road, Ganapathy Theatre
Complex II Floor,
Gummidipoondi 601 201

+1cc to Mr.K.Vaitheeswaran, Advocate Sr. 59265
+1cc to Special Government Pleader, Sr. 19386

W.P.No.19386 of 2017
and W.M.P.No.20895 of 2017

AR(IV)
VR(05/09/2017)