IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2017

CORAM

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

W.P.No.30706 of 2004
&
W.M.P.No.37193 of 2004

M/s.Sri Kumaran Trading Company,
Rep.by its Proprietor Narayan Singh,
No.47, Manali Express Road,
Ernavoor, Chennai-600 057.

.. Petitioner

Vs

The Deputy Commercial Tax Officer,
Manali Assessment Circle,
Kuralagam Annexe,
Chennai 600 057.

...Respondent

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in CST.718751/2001-02 dated 28.9.04, and quash the same as illegal and against the principles of natural justice and fair play and direct the respondent to consider the returns filed and grant personal hearing.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

Heard Mr.T.Pramodkumar Chopda, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner is aggrieved by an order of assessment under the Central Sales Tax Act (CST Act) for the year 2001-02. The respondent issued a notice dated 07.06.2004, referring to an inspection which was conducted in the place of business of the petitioner by the Enforcement Wing Officer on 01.07.2003 and

stated that the petitioner has effected interstate sales of Iron and Steel for Rs.30,62,695/- for the year 2001-02, but the turnover was not reported to the department and the dealer has not filed 'C' Form declaration for the interstate sales turnover. Therefore, the respondent proposed to assess the petitioner under Section 9(2) of the CST Act r/w Section 12(2) of the TNGST Act, 1959. There was also a proposal to levy penalty. The petitioner submitted their objections, dated 21.06.2004, stating that the major purchases about 90% is from M/s.Rashtriya Ispat Nigam Limited, Manali Stock Yard, Chennai, a public sector undertaking and registered as a dealer and regularly remitting sales tax. Out of the remaining 10%, 50% is purchased directly from re-rolling mills on payment of tax. Therefore, it is submitted that 95% of the purchases are first sales and the taxes which have been charged, have been paid by the purchaser, only in respect of the balance purchase relating to the tax suffered purchases i.e., 2nd and subsequent sales from the local registered dealers. Therefore, the petitioner contended that the proposal to disallow the entire claim of second sale exemption, when 95% or more are first purchase made by the petitioner is erroneous and contrary to the provisions of the Act.

3. With regard to the proposal to disallow the claim of second sale exemption relating to the purchases made from registered dealer like M/s.Aashians Enterprises, M/s.Kamlesh Enterprises, M/s.Shreyans Ispat Chennai (P) Ltd., and M/s.Tulsyan NEC Ltd., on the basis of inspection and alleged statement of the dealers, the petitioner requested furnishing the copies of the statements at their cost and provide opportunity for cross examination of those dealers. Further, in respect of the proposed estimation based on interstate purchases made from M/s.Steel Suppliers, Kolkata, the petitioner prayed for some more time to file reply.

4. On the above grounds, they requested for dropping the proposal or on the other hand to furnish the copies of the statement and records relied on in the notice and provide the dealers for being cross examined, so that a detailed and effective objection can be filed. On receipt of the petitioner's letter, dated 21.06.2004, the respondent issued notice dated 18.08.2004, granting 15 days time to file final objections. On receipt of the notice, the petitioner filed objection dated 30.09.2004, stating that due to bonafide belief, they have reported the second and subsequent interstate sale of declared goods for Rs.47,28,400/- in the TNGST return instead of CST return, which after verification, was allowed exemption. Therefore, the petitioner stated that they are rectifying the mistake by filing return disclosing interstate turnover under the CST Act and consequently, filing revised return under the TNGST Act by reducing the turnover reported. Therefore, it is

contended that there is no omission to report the interstate turnover and it is on account of mistake are overstated. The petitioner also stated that interstate sale was made out of tax paid/suffered purchases under the TNGST Act and therefore, the interstate sale of the same is exempted as per G.O.Ms.No.3602, Revenue dated 28.12.1963. Further, the petitioner stated that the proposed levy of tax at 8% is illegal.

5. The respondent, on receiving the objections, has noted the same and rejected the objections by observing that the petitioner has not furnished the details as to which bill will count for the turnover of Rs.47,20,401/-. If this was the reason for the respondent to confirm the assessment, before doing so, the respondent should have directed the petitioner to appear before him and produce details to correlate which are the bills that have to be brought in for the turnover of Rs.47,20,401/-. However, he without doing so, rejected the petitioner's objection and confirmed the proposal. In the para-wise comments in the draft counter affidavit prepared by the respondent, the same stand as taken in the impugned order has been reiterated. However, the respondent has not stated as to why, he has not called for the petitioner to produce the details.

6. Thus, considering the peculiar facts and circumstances of the case that the interstate sale of declared goods for Rs.47,28,400/- was mentioned in the TNGST return, which was verified and exemption was allowed, this Court is inclined to give one more opportunity to the petitioner to establish before the authority by producing the relevant records in support of their claim. For the above reason alone, the impugned order is interfered with.

7. In the result, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner during which the petitioner should produce all the bills and relevant details and clearly reconcile as to which of the bills, which have to be counted for the turnover of Rs.47,20,401/- and after hearing the petitioner, the respondent shall redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer,
Manali Assessment Circle,
Kuralagam Annexe,
Chennai 600 057.

+1 CC to Mr.T.Pramodkumar Chopda, Advocate sr 50553.

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MV(CO)
sp(16/08/2017)