IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM :

The Hon'ble Mr. Justice T.S.Sivagnanam

W.P.No.24945 of 2008
and
M.P.No.2 of 2008

M/s. Marudhar Tanchem (P) Ltd.,
No.93, E.V.K. Sampath Road,
Chennai - 600 007,
represented herein by its Director,
Mr.Navneeth Bhaiya.

.. Petitioner

Vs

1. The Government of Tamil Nadu,
   Represented by its Chief Commissioner,
   Commercial Taxes Department,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner (CT),
   Purasawakkam Assessment Circle,
   Chennai - 600 108.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent, relating to the impugned Notice for recovery of money due dated 16.09.2008 issued under reference RC.No.1868/2008/A3 and to quash the same and consequently direct the second respondent to re-assess the tax liability of the Writ Petitioner on account of TNGST and CST for the Assessment year 2002-2003, taking into account the balance Form XVIIs and Form Cs submitted / to be submitted by the Writ Petitioner.

For Petitioner : Mr.B.Hari Krishnan
For Respondents: Mr.S. Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.B.Hari Krishnan, the learned counsel for the petitioner and Mr.S. Kanmani Annamalai, the learned Additional Government Pleader for the respondents.

2. The petitioner, who is the registered dealer on the file of the second respondent, has filed this Writ Petition, challenging the recovery notice, dated 16.09.2008 issued by the second respondent, and for the consequential direction, to review the assessment order, dated 31.03.2008.

3. The issue involved in this Writ Petition lies in a narrow compass. The assessment was completed for the assessment year 2002-2003 under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter, referred to as 'TNGST Act') and the tax payable by the petitioner was quantified.

4. According to the petitioner, they are entitled to remit concessional rate of tax on production of Form XVII and Form C declarations. However, the petitioner could not produce the Forms in time, because of a fire accident, which took place in the Factory. The petitioner's case is that, they sought for time to produce Form XVII and Form C declarations, but the respondent did not grant them reasonable time to produce the same, but passed the impugned order, and subsequently, has issued the impugned recovery notice, attaching the petitioner's Bank account.

5. At the time of the Writ Petition was entertained, an order of interim stay was granted, and the respondent was directed to file counter affidavit in the matter. The order shows that from the year 2008, the matter has been adjourned for the respondent to file counter affidavit. When the case was came up on 06.01.2009, the Court admitted the Writ Petition, and observed that, despite sufficient opportunity, no counter affidavit has been filed, and the order of interim stay was directed to continue to until further orders. Even today, the second respondent has not given any written instructions to the learned Additional Government Pleader.

6. Considering the facts and circumstances of the case, and also the recent Circular issued by the Commissioner of Commercial Taxes that, Form XVII and Form C declarations can be filed within a reasonable time, and if such, Forms are filed, the Assessing Officers were directed to revise the assessment and pass consequential orders, and if the petitioner is entitled for concession in the rate of tax, then, such benefit should not be denied, especially, when the petitioner has complained that there was a fire accident in their Factory, which fact has not

been disputed or controverted by the respondent, this Court is inclined to grant appropriate relief to the petitioner

7. For the above reasons, this Writ Petition is allowed and the impugned notice and the order of assessment, dated 31.03.2008 are set set aside and the matter is remanded to the second respondent for fresh consideration. The petitioner is granted 30 days' time to produce Form XVII and Form C declarations, and if the same are produced within the time permitted, the second respondent shall take note of the same, verify its correctness and genuinenity and proceed to redo the assessment for the year 2002-2003 in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

msm/sd

To
1. The Government of Tamil Nadu,
Represented by its Chief Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner (CT),
Purasawakkam Assessment Circle,
Chennai - 600 108.

W.P.No.24945 of 2008

SP(18/01/2018)