IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16258 of 2007
&
M.P.No.2 of 2007

M/s. Nouveaux Industries,
355-A, Tiruppur Road,
Kangeyam. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Kangeyam. ... Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the respondent in TNGST No. 3081117/2002-03 and quash the proceedings dated 10.01.2007 issued therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.B. Raveendran, learned counsel for the petitioner and Mr.K. Venkatesh, learned Government Advocate for the respondent.

2. The petitioner is aggrieved by the order of assessment passed by the respondent under the provisions of TNGST Act, 1959 for the year 2002-2003.

3. Though the learned counsel for the petitioner commenced his arguments on the factual aspects, later on, sought to impressed upon this Court that the respondent, while completing the assessment and passing the impugned order, has not considered the detailed objection given by the petitioner dated 18.12.2006.

4. On a perusal of the objection, I find that it is a very elaborate objection setting out various factual details as well as relating to several decisions. However, the respondent, in a single line, has stated that the judgments relied on by the petitioner are not relevant to the case. No reasons have been assigned as to why those judgments are not relevant. Further, in the finding rendered by the respondent, it is stated that once the wire is subjected to processing by coating with copper from and out of the chemicals purchased, both from within the State and out of State, then the original identity is lost and a new product emerges and the same is taxable at 4% as per specified entry and not under entry 4(XV) of the second schedule. For this reasoning alone, the objection has been overruled.

5. Though counter affidavit has not been filed by the respondent, parawise instructions have been given by the respondent to the learned Special Government Pleader - Taxes by letter dated 26.06.2007. For the first time, in the parawise remarks, the respondent refers to assessments made under the Central Excise Act and has also referred to certain decisions under the Central Excise Act. However, such an exercise was not done while passing the impugned assessment order. Thus, this Court, being convinced that the impugned assessment order has been passed without due consideration of the objection filed by the petitioner and since the matter is languishing in the Court from the year 2007 and the recovery proceedings having been stayed, it is a fit case where the matter should be remitted back to the respondent for fresh consideration.

6. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remitted back to the respondent for fresh consideration and the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment, by considering the objection given by the petitioner and pass a speaking order, on merits and in accordance with law. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nv

To

The Deputy Commercial Tax Officer,
Kangeyam.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.69192

W.P.No.16258 of 2007

MN(CO)
CA(24/10/2017)