IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.11.2017
CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.34798 of 2006

M/s.Maxwell Industries Ltd.,
(Spinning Division),
Kolapalur - 638 456
Gobichettipalayam. ... Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Bharathi Street,
Gobichettipalayam.

2.The Commercial Tax Officer,
Tirupur (North), Tirupur.

3.M/s.ATL Textiles Ltd.,
154, Avinashi Road,
Tirupur. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the recordsd of the first respondent herein in the proceedings in CST NO.600768/1999-2000 on his file, quash the order dated 21.07.2006 passed therein, and further direct the first respondent to grant exemption to the petitioner under Section 5(3) of the CST Act, 1956, in view of the fact that the goods purchased by the third respondent from the petitioner herein were exported, for which the second respondent, in his proceedings dated 24.10.2001, had already granted exemption to the third respondent.

For Petitioner : Mr.R.Ravindran

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R.Ravindran, learned counsel the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.The petitioner has challenged the assessment order for the year 1999-2000 dated 21.07.2016 passed under the provisions of the Central Sales Tax Act. The only ground on which the impugned order has been challenged is stating that the respondent has not strictly adhered to the directions issued by this Court in the earlier writ petition being W.P.No.20189 of 2003. The said writ petition was filed for issuance of a writ of certiorari to quash the assessment order dated 24.10.2001 wherein the petitioner sought for a direction to the 1st respondent, their Assessing Officer to issue notice to the 2nd respondent/Assessing Officer of the 3rd respondent and get all the particulars to the export of goods supplied by the petitioner to the 3rd respondent herein and grant exemption under Section 5(3) of the Central Sales Tax Act, 1956 without insisting upon the production of Form H Declaration. The writ petition was disposed of, by order dated 22.07.2003, following the Division Bench in W.A.No.458 of 1997 dated 03.10.2001. The operative portion of the Judgment reads as follows:

> "2.A Division Bench of this Court had already decided similar issue in W.A.458 of 1997 by order dated 3.10.2001 wherein it has been stated that mere filing of Form H alone is not conclusive and it is open to the Assessing Officer to deal with the assessment proceedings in respect of the dealer claiming exemption under Section 5(3) of C.S.T. Act by conducting an enquiry so as to find out the genuineness of the claim made in Form H and it is open to him to insist in the dealer to prove the contents of the documents furnished.
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> 3.It is submitted by Mr.Ramani, learned counsel appearing for the petitioner that the petitioner already had filed an application invoking Provision under 54-A of the Tamil Nadu General Sales Tax Act 1959 and the same has not been considered by the respondents. It is further submitted by the learned counsel that in the said application the assessee has given the particulars of subsequent purchasers and relevant documents.
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> 4.It is evident from the impugned order that the authorities have not even considered the said application but hastily passed the impugned order on the sole ground that Form-H has not been filed. The Division Bench of this Court in the judgment mentioned above directed the authorities to conduct enquiry and to find out the genuineness of the claim taking into consideration of the other documents furnished by the dealer.
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> 5.Under the circumstances, the matter is remanded to the first respondent and the

> first respondent is directed to consider the application filed under Section 54-A of the Act and also the documents, namely, Invoice, Bill of Lading A.R.5 copies submitted by the petitioner, conduct enquiry and pass orders afresh on merits and in accordance with law after giving opportunity to the petitioner, within a period of two weeks from the date of receipt of a copy of the order. The petitioner is also directed to furnish particulars relating to export house."

3.Thus, in terms of the above directions, the 1st respondent was required to call for the necessary records and details from the 2nd respondent and then conduct an enquiry and pass fresh orders on merits. However, the 1st respondent has partially complied with the directions and appears to have secured some information from the 2nd respondent, the Assessing Officer of the 3rd respondent. However, without providing further opportunity to the petitioner held that the materials collected by him are sufficient to conclude the case against the petitioner. This procedure adopted by the 1st respondent is in violation of the principles of natural justice as the petitioner had no opportunity to rebut the materials which were collected by the 1st respondent from the 2nd respondent and relied upon to nonsuit the petitioner. Therefore, the order requires to be set aside and remanded for fresh consideration.

4.Accordingly, the Writ Petition is allowed and the impugned order is set aside and the 1st respondent is directed to afford an opportunity of personal hearing to the petitioner, furnish the details of the information collected from the 2nd respondent, give opportunity to the petitioner to submit further objections and redo the assessment in accordance with law. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Deputy Commercial Tax Officer,
Bharathi Street,
Gobichettipalayam.

2.The Commercial Tax Officer,
Tirupur (North), Tirupur.

+1cc to Mr.B.Raveendran, Advocate SR.No.83333
+1cc to special Government Pleader SR.No.82256

W.P.No.34798 of 2006

sm:8.12.2017