IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.43507 of 2016

and W.M.P.No.37334 of 2016

Tvl.The PCK Buderus [India] Special
Steels Pvt. Ltd.,
Rep. by its Director P.L.Krishnan,
No.13, South West Boag Road,
T.Nagar, Chennai - 600 017. .. Petitioner

Vs.

The Assistant Commissioner [CT],
Nandanam Assessment Circle,
No.46, Greenways Road,
Chennai - 600 0028. .. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the respondent in CST No.638968/2013-14 dated 14.11.2016 quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the principle laid down by this Court and direct the respondent to consider the petitioner representation dated 01.12.2016 before passing the assessment order or issue such other writ, direction as this Court may think deem and fit proper in the circumstance of the case.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

1. Notice in this Writ Petition has been issued on 19.12.2016. On that date, I had asked Mr.K.Venkatesh, learned Government Advocate, to revert with the instructions. I had also indicated that, in case, instructions are received to resist the Writ Petition, counter affidavit will be filed before the next date of hearing. The matter was re-notified on 12.01.2017.

Interim direction against the precipitative action was also granted.

2. On 12.01.2017, accommodation was sought on behalf of the respondent. No counter affidavit has been filed on behalf of the respondent. A perusal of the impugned order would show that, inter-state sales turnover in respect of Iron and Steel is not covered by “C” Form declarations.

2.1. Record shows that a Pre-Assessment Notice dated 30.09.2015, was issued to the petitioner, to which a reply dated 14.10.2015 was filed. Apparently, a second Pre-Assessment Notice was issued by the respondent, on 17.10.2016. The petitioner claims that, a reply dated 10.11.2016 was filed qua the same as well.

2.2. While there is acknowledgment available on record vis-a-vis, the reply dated 14.10.2015, no proof of acknowledgment was available vis-a-vis the reply dated 10.11.2016. However, as would be evident upon the perusal of the impugned order dated 14.11.2016 that, it was passed without having regard to the second reply filed by the petitioner. But fault, if any, can be found on this score only if it is established that the second reply dated 10.11.2016 was served on the respondent.

2.3. Furthermore, after the impugned order was passed, a representation was made by the petitioner on 01.12.2016, wherein, a reference was made to the fact that on 14.10.2015 following documents have been filed.

- 119 Nos of C Form (original) C form for the gross value of Rs.9,33,28,740.46
- 12 Nos of F Form (original) Rs.5,90,27,46.18
- Form I certificate 3 Nos (original) Rs.429240
- Xerox copy of bonded sales agreement (Hindustan Aeronautics Ltd)
- Xerox copy of bonded sales agreement (venture Automotive Tooling India P Ltd)
- Invoice no-061 to 069 (9 sales invoices) for Rs.11,259,417/-
- Credit note copy 3 Nos.
- 6 Numbers of cancelled invoices (original and duplicate)

3. Learned counsel for the petitioner says that none of the documents filed by the petitioner have been taken into account. Furthermore, it is the submission of the learned counsel for the petitioner that, while the demand notice dated 14.11.2016, bears the signature of the respondent, the Assessment Order has not been signed by the said Officer. Learned counsel, thus, says that the impugned Assessment Order should be set aside on this ground alone.

4. Mr.K.Venkatesh, learned Government Advocate, who appears for the respondent, submits he cannot but accept that the absence of signature on the impugned Assessment Order dated 14.11.2016, makes the order susceptible to interference by the Court.

5. I have heard the learned parties and perused the record.

6. It appears that the respondent / Assessing Officer has passed the impugned Assessment Order dated 14.11.2016, in haste, and consequently, not even appended his signature on the Order.

7. The petitioner's case, on the other hand, is that, it has available with it "C" Form declarations and therefore, an opportunity should be granted to furnish the same.

8. I am inclined to agree with the submissions made in this behalf by the learned counsel for the petitioner.

9. Accordingly, the impugned order is set aside. The authorised representative of the petitioner is directed to appear before the respondent / Assessing Officer on 17.02.2017 at 11.00a.m.

10. The authorised representative of the petitioner will carry all the original declarations and documents, if not already filed to the hearing as indicated above.

11. The respondent / Assessing Officer, after affording an opportunity to the authorised representative of the petitioner, will pass a fresh order.

12. Needless to say, the order passed will be a speaking order.

13. The Writ Petition is disposed of in terms of the aforementioned directions. Consequently, pending application is also closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sri

To

The Assistant Commissioner [CT],
Nandanam Assessment Circle,
No.46, Greenways Road,
Chennai - 600 0028.

+1cc to M/s.D.Vijayakumar, Sr.7013

+1cc to Special Government Pleader(Taxes) sr.7175

W.P.No.43507 of 2016

nr(co)
ss(15/2/2017)