In the High Court of Judicature at Madras

Dated : 24.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.10242 of 2018 & WMP.No.12177 of 2018

Tvl.Socomec Innovative Power
Solutions Pvt. Ltd., Chennai-32. ...Petitioner

Vs

The State Tax Officer (CT), Alandur
Assessment Circle, No.12, Vedagiri
Street, Alandur, Chennai-16. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the respondent herein dated 15.3.2018 TIN 33820702648/2014-15, quash the same and direct the respondent to redo the assessment for the year 2014-15 with respect to reversal of input tax credit in the light of the provisions governing input tax credit reversal on inputs.

For Petitioner : Mr.K.Senguttuvan
For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. This is the second time the petitioner is before this Court challenging the assessment order passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2014-15.

3. Earlier, the petitioner filed W.P.Nos.17884 and 17885 of 2017 challenging the assessment orders dated 16.6.2017 for the years 2014-15 and 2013-14 respectively. The assessment orders dated 16.6.2017 were passed by the respondent by reopening the assessment invoking his power under Section 84 of the said Act. This Court, after taking into consideration the submissions made on either side, found that the assessment orders dated 16.6.2017 were arbitrary and unreasonable, since the Assessing Officer, who sought to reopen the assessment by invoking the power under Section 84 of the said Act, did not give adequate opportunity to the dealer, which would include an opportunity of personal

hearing. Secondly, this Court also found that the Assessing Officer would have to make out a prima facie case that the assessment orders dated 16.6.2017 suffered from any error apparent on the face of the orders to invoke Section 84 of the said Act. Noting that there was no record to show that the Assessing Officer issued notice to the dealer and called for documents, this Court allowed the said writ petitions by a common order dated 14.7.2017 and remanded the matters to the respondent with certain directions. The operative portion of the common order dated 14.7.2017 made in WP.Nos.17884 and 17885 of 2017 reads as follows :

> "....There is nothing on record to show that the respondent had issued notice to the dealer and called for documents and in spite of such notice, they failed to produce the same. Obviously, there can be no such record because the objections were filed on 16.06.2017 and the impugned orders were also passed on the very same day. Thus, this Court has no hesitation to hold that the impugned order is an outcome of non-application of mind in violation of principles of natural justice and arbitrary exercise of power.
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> 4. For all the above reasons, the writ petitions are allowed, the impugned orders passed by the respondent are set-aside and the matter is remanded to the respondent for fresh consideration who shall issue notice to the petitioner directing the petitioner to submit the documents clearly stating that as to what are the documents that are required to be produced and after receipt of the reply/documents, the respondent is directed to afford an opportunity of personal hearing and pass fresh orders on merits and in accordance with law by assigning reasons."

4. Pursuant to the common order dated 14.7.2017, the respondent issued the notice dated 25.1.2018 for the assessment year 2014-15, to which, the petitioner gave a letter dated 22.2.2018 requesting three weeks' time to enable them to collect additional documents as per the said notice dated 25.1.2018. However, the respondent completed the assessment and passed the impugned assessment order on the ground that the petitioner had not produced necessary documents.

5. In my considered view, the reasonable manner, in which, the respondent should have proceeded with the matter, is to give some more time to the dealer to respond to the notice, since the impugned order is a case of reopening of assessment, which was completed earlier. Pointing out the errors in the impugned order

of assessment, the petitioner filed a petition dated 28.3.2018 under Section 84 of the said Act requesting to modify the same. This petition under Section 84 of the said Act is now pending before the respondent. In the light of the above factual position, ends of justice would be met if the respondent is directed to finalize the petition under Section 84 of the said Act.

6. Accordingly, the writ petition is disposed of by directing the respondent to consider the petition dated 28.3.2018 filed under Section 84 of the said Act, afford an opportunity of personal hearing to the petitioner and pass appropriate orders on merits and in accordance with law, within a period of 45 days from the date of receipt of a copy of this order. Till then, no coercive action shall be initiated against the petitioner for recovery of tax as quantified in the impugned assessment order. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

RS

To
The State Tax Officer (CT),
Alandur Assessment Circle, No.12,
Vedagiri Street, Alandur, Chennai-16.

+1cc to the Spl Government Pleader, S.R.No. 30959

WP.No.10242 of 2018&
WMP.No.12177 of 2018

ssi(CO)
TR(14/05/2018)