IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9841 of 2018
and W.M.P.No.11775 of 2018

Royal Welding Wires Pvt. Ltd.,
Rep. by its Director, Ali Akbar,
Urappakkam, Chennai-603 202. ... Petitioner

Vs.

The Assistant Commissioner (ST) FAC,
Thirukazhukundram Circle,
Wahab Nagar, Thirukazhukundram. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the respondent herein in his TIN 33681681746/2013-14 dated 18.12.2017, to quash the same and to direct the respondent to redo the assessment after providing opportunity of being heard along with their objection dated 09.10.2017.

For Petitioner : Mr.R.Kumar
For Respondent : Mrs.G.Dhanamadhri, Government Advocate (Taxes)

O R D E R

Heard Mr.R.Kumar, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner is before this Court for the second time challenging the assessment made under the provisions of the Tamil Nadu Value Added Taxes Act, 2006 (hereinafter referred to as "the TNVAT Act") for the assessment year 2013-14. Earlier, the petitioner filed Writ Petition No.2079 of 2017, challenging the assessment order for the very same year, which is dated 16.09.2016. The writ petition was allowed by order dated 03.07.2017, on the ground that effective opportunity was not granted to the petitioner and accordingly, the matter was remitted back to the assessing officer to redo the assessment with certain observations made in the order. Pursuant to the said order, the respondent issued notice on 29.09.2017, for which the petitioner has given their reply on 09.10.2017, and

the assessment has been completed and the impugned order has been passed.

3. The learned counsel for the petitioner vehemently contended that the calculation done by the respondent is wholly erroneous and the petitioner has maintained separate accounts for the refund claimed for zero rated sales made by them and without considering the objections, the respondent has mechanically confirmed the proposal.

4. Further, it is contended that the formula adopted for reversal of input tax credit is totally wrong, and based on a wrong formula, the respondent has levied penalty. Further, it is submitted that the respondent having sanctioned the refund for the zero rated sales made by the petitioner and has made reversal of input tax credit for the refund claimed. Thus, it is contended that the impugned assessment order is replete with mistakes and therefore, requested this Court to interfere with the proceedings.

5. As rightly pointed out by the learned Government Advocate (Taxes) that the points urged by the petitioner before this Court are all factual, the impugned assessment order has been passed after giving due opportunity to the petitioner in terms of the observations contained in the order passed by this Court in the earlier writ petition. Therefore, the petitioner should agitate all the questions on fact before the appellate authority. Hence for such reason, this Court is not inclined to entertain the writ petition.

6. Accordingly, this writ petition is disposed of by directing the petitioner to file an appeal before the appellate authority, the Commissioner (ST) (FAC) within a period of fifteen day's from the date of receipt of a copy of this order. If the appeal is filed within the said time, the appellate authority shall take the appeal on file without rejecting the same on the ground of limitation. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

abr

To

The Assistant Commissioner (ST) FAC,
Thirukazhukundram Circle,
Wahab Nagar, Thirukazhukundram.

+1 CC to Mr.R. Kumar, Advocate sr 29439.
+1 CC to Spl. Govt. Pleader(T) sr 30075.

W.P.No.9841 of 2018

SP(08/05/2018)