IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.11330 of 2018
and
W.M.P.Nos. 13228 & 13229 of 2018

Tvl. SPX Thermal Equipment and services India Pvt Ltd,
Represented by its Director R.Sunder,
Apex Plaza 3rd floor,
No.3, Nungambakkam High Road,
Nungambakkam. Chennai.34 ... Petitioner

vs.

The Assistant Commissioner (CT)
Vallurvarkottam Assessment Circle
No.10, Palaniyappa Maligai,mplex,
4th floor, Greams Road, Chennai - 6. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the respondent proceedings in CST/1219437/2015-16 dated 30.05.2017 and the connected proceedings dated 26.02.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the principle laid down by this Honorable Court.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader (Taxes)

O R D E R

The petitioner is aggrieved against the order of the respondent dated 30.05.2017 and the connected proceedings dated 26.02.2018.

2. In respect of assessment year 2015-16, an order of assessment was passed on 30.05.2017 and the said order was put to challenge before this Court in W.P.Nos. 16414 and 16415 of 2017. This Court by an order dated 31.07.2017, disposed those writ petitions by directing the petitioner to file a petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, and on receipt of such petition, the respondent was directed to afford an opportunity of personal hearing and pass a speaking order on merits and in accordance with law, in respect of the issues which are raised in the petition filed under Section 84 of the said Act. Consequently, the petitioner filed their petition under Section 84. The respondent by notice dated 02.02.2018, called upon the petitioner to appear on 15.02.2018 with all the original documents. Thereafter, the present impugned order was passed on 26.02.2018, imposing tax on the petitioner to the tune of Rs.6,82,86,427/-.

3. Now, the present writ petition is filed by contending that the petitioner was not given opportunity of personal hearing as directed by this Court in its earlier order dated 31.07.2017 made in W.P.Nos. 16414 and 16415 of 2017. It is also contended that a fresh issue is raised and dealt with in the impugned order in respect of certain invoices referred to at para 2a of the order, while in fact, no notice of proposal was issued in respect of such issue.

4. On the other hand, the learned Additional Government Pleader appearing for the respondent submitted that personal hearing was given to the petitioner not only on 15.02.2018 and also again on 22.02.2018, as could be seen from impugned order itself. Therefore, the allegation made by the petitioner in respect of the personal hearing is factually incorrect. He further submitted that insofar as the other contentions raised with regard to the invoices referred to at paragraph 2a of the impugned order is concerned, the learned Government Pleader submitted that the said issue was already dealt with in the original order of assessment and therefore, the petitioner is not entitled to say that it is a new issue relating to notice of proposal.

5. Heard both sides.

6. There is no dispute of the fact that this is the second round of litigation in respect of the very same assessment pertaining to the assessment year 2015-16. It is true that this Court has passed the earlier order while disposing the above writ petitions by giving liberty to the petitioner to file an application under Section 84 of the Act and also with a direction to the respondent to afford an opportunity of personal

hearing to the petitioner.

7. Perusal of the order passed by the respondent, impugned in this writ petition would show that such opportunity was given to the petitioner not only on 15.02.2018 and also on 22.02.2018. Therefore, this Court is not convinced that the petitioner was not afforded with any opportunity of personal hearing. Insofar as the other contentions of the petitioner with regard to the invoices referred to at paragraph number 2a of the impugned order is concerned, it is seen that those invoices were referred to in the original order of assessment itself and when this Court has permitted the petitioner to file 84 application, it is for them to make specific mention about those invoices, if they are aggrieved against such issue and if the same was not raised without any prior notice of proposal.

8. Perusal of the facts and circumstances of the case would show that the entire issue was raised by the petitioner before this Court in this writ petition pertains to factual aspects of the matter, which has to be gone into and considered by the next fact finding authority viz., the Appellate Authority. It is for the petitioner to work out their remedy before the Appellate Authority by filing regular appeal, since those authorities are also the fact finding authority.

9. Accordingly, without expressing any view on the merits of the matter, this writ petition is disposed of, by granting liberty to the petitioner to file such statutory appeal before the concerned Appellate Authority within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed, the said Appellate Authority will consider the same on merits and pass orders in accordance with law, without referring to the period of limitation. However, the petitioner is bound to comply with other statutory requirements, while filing such appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sni/vri

To

1. The Assistant Commissioner (CT)
   Vallurvarkottam Assessment Circle
   No.10, Palaniyappa Maligai,mplex,
   4th floor, Greams Road, Chennai - 6.

+1cc to Mr.D.Vijayakumar, Advocate sr.no.68080
+1cc to Special Government Pleader(Taxes)

W.P.No.11330 of 2018

kan(co)
nr 29/10/2018