In the High Court of Judicature at Madras

Dated : 02.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.2251 to 2253 of 2018
& WMP.Nos.2743 to 2748 of 2018

M/s.CEAT Limited, rep.by
its Authorized Signatory
T.R.Kamalakannan ...Petitioner in all Wps

Vs

The Assistant Commissioner (ST),
Pammal Assessment Circle,
33 & 34, Sripuram 2nd Street,
Chrompet, Chennai-44. ...Respondent in all Wps

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in his proceedings respectively in (i) TIN 33746221992/2008-09; (ii) TIN 33746221992/2009-10; and (iii) TIN 33746221992/2010-11, all dated 15.12.2017 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. Since the impugned orders suffer from glaring errors, this Court is of the view that interest of the Revenue will be protected only if the matters are remanded to the respondent to decide some of the issues, which have not been properly dealt with by the respondent. In addition to that, there is a serious violation of the principles of natural justice.

3. The petitioner is a registered owner on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The

respondent issued notices dated 13.4.2017 for the assessment years 2008-09, 2009-10 and 2010-11 referring to the VAT audit conducted in the place of business of the petitioner during the period from 17.8.2016 to 26.8.2016. It was pointed out in the said notices dated 13.4.2017 that on verification of the records, it was noticed that the petitioner collected tax at 4%/ 5% for the sale of tyres, tubes and flaps instead of 12.5%/14.5% as per Sl.No.66 of Part C of First Schedule to the State Act with Code No.366. It was further pointed out that the petitioner reported the turnover as if the commodity falls under Entry 2067 'industrial inputs', for which, they should have produced relevant certificate for claiming concessional rate of tax at 4%. Thus, the respondent proposed to levy tax at the rate of 12.5% on the turnover of Rs.79,64,88,455/-, Rs.13,47,74,124/- and Rs.10,31,24,361/- respectively for the relevant assessment years. It was also pointed out in the said notices dated 13.4.2017 that the respondent proposed to levy penalty under Section 27(4) of the State Act for having filed incorrect and incomplete returns.

4. The petitioner submitted their reply dated 04.5.2017 attaching the industrial input/concessional certificate for all the relevant assessment years and requested time to produce the balance certificates, which they agreed to produce within one month, as they were in the process of collecting the same. This was followed by further representations dated 24.5.2017, where some more industrial input certificates were furnished. The petitioner also enclosed the petitioner's correspondence with one M/s.Caterpillar India Private Limited, Tiruvallur requesting for issuance of the industrial input certificate, which they were required to produce before the Assessing Officer. Subsequently, by representations dated 21.7.2017, the petitioner produced some more industrial input certificates. However, the respondent, without affording an opportunity of personal hearing to the petitioner, completed the assessments and passed the impugned orders.

5. In so far as the turnover, which have been covered by the industrial input certificate is concerned, the respondent accepted the same and levied tax at concessional rate. However, in the impugned orders, the petitioner has been denied the concessional rate of tax for the turnover to the extent of Rs.65,47,941/-, Rs.19,74,027/-, and Rs.11,41,175/- respectively for the relevant assessment years. The allegation made against the petitioner is that there is a duplication of invoice values.

6. However, this Court finds that there is no such notice issued to the dealer before arriving at a conclusion. The mistake committed by the Assessing Officer is that she has not

afforded an opportunity of personal hearing to the petitioner. Had such opportunity been granted, the petitioner would have been able to produce records as to the allegation of duplication of invoice values. Having not done so, the denial of concessional rate of tax for that portion of the turnover has to be held to be in violation of the principles of natural justice. Therefore, the finding to that extent is liable to be set aside.

7. As noticed above, in the show cause notices dated 13.4.2017, there has been a proposal to levy penalty under Section 27(4) of the State Act. The notices dated 13.4.2017 do not show as to how the petitioner is liable to pay penalty, as there is no specific allegation of willful non disclosure of the assessable turnover. It has to be seen as to whether, in the instant case, penalty is levyable.

8. Section 27 of the State Act deals with assessment of escaped turnover and wrong availment of input tax credit. Admittedly, the petitioner did not avail any input tax credit. Therefore, it has to be seen as to whether Section 27(3) read with Section 27(4) of the State Act would stand attracted to the petitioner's case.

9. The allegation against the petitioner is not that the turnover escaped assessment to bring it within the fold of Section 27(1)(a) of the State Act. The petitioner's case would fall under Section 27(1)(b) of the said Act where part of the turnover of business of the dealer has been assessed at a rate lower than the rate, at which, it is assessable on the ground that the petitioner has not produced the industrial input certificates.

10. On a reading of Section 27(3) of the State Act, it is clear that penalty is levyable only in circumstances where an assessment is made under Clause (a) of Sub-Section (1) of Section 27 of the State Act. When there is an assessment to lower rate of tax, the question of levying penalty under Section 27(3) read with Section 27(4) of the State Act does not arise. Therefore, levy of penalty is unsustainable and is liable to be set aside.

11. For all the above reasons, the writ petitions are partly allowed, the denial of concessional rate of tax for part of the turnover on the ground of duplication of invoice values and non filing of industrial input certificate is set aside and the matters are remanded to the respondent for a de novo consideration. The petitioner is directed to meet the allegation of duplication of invoice values and produce the industrial input certificates, which are in their possession. The respondent is directed to afford an opportunity of personal hearing to the petitioner and redo the assessment to that

effect. For the reasons stated in the preceding paragraphs, the levy of penalty on the petitioner is held to be without jurisdiction. Accordingly, the same is quashed. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

RS

To

The Assistant Commissioner (ST), Pammal Assessment Circle, 33 & 34, Sripuram 2nd Street, Chrompet, Chennai-44.

1 cc to Spl.Government Pleader (Taxes), Sr. 9061
1 cc to M/s.S. Ramanathan, Advocate, Sr. 7800

WP.Nos.2251 to 2253 of 2018&
WMP.Nos.2743 to 2748 of 2018

SJ (CO)
kk 17/2