In the High Court of Judicature at Madras

Dated : 02.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.2261 to 2263 of 2018
& WMP.Nos.2754 to 2759 of 2018

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

Vs

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

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 33746221992/2012-13; (ii) TIN 33746221992/2013-14; and (iii) TIN 33746221992/2014-15, 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. The petitioner has challenged the orders dated 15.12.2017 assessing part of the petitioner's turnover for the relevant assessment years to higher rate of tax on the ground that the petitioner has not produced the industrial input certificate.

3. In my considered view, had the respondent afforded an opportunity of personal hearing to the petitioner, the above writ petitions could have been avoided and the assessments could have been completed in a proper manner.

4. The petitioner, while producing the industrial input certificates available with them along with the reply dated 04.5.2017 to the show cause notices dated 13.4.2017, requested one month's time to produce the certificates. It is no doubt true that the petitioner did not do so. However, since the respondent granted partial relief by accepting the certificates produced, a further notice could have been issued to the petitioner giving them one more opportunity to produce such certificates.

5. The Principal Secretary and Commissioner of Commercial Taxes has issued a circular empowering the Assessing Officers to receive declaration forms as well as the certificates whenever the dealer seeks to avail concessional rate of tax and there is no time limit prescribed for receiving those documents and the circular also empowers the Assessing Officers to redo the assessment. Therefore, had an opportunity been granted to the assessee, they would have been in a position to produce such certificates, which are now available with them.

6. The learned counsel for the petitioner submits that the petitioner is in possession of necessary certificates and that if one opportunity is granted, they are ready and willing to go before the Assessing Officer and produce the certificates.

7. The next issue is with regard to levy of penalty. 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 higher 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 higher 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. In the light of the above, the writ petitions are partly allowed and the impugned assessment orders are set aside in so far as they levy higher rate of tax for non production of industrial input certificates and the matters are remanded to the respondent for a fresh consideration giving liberty to the petitioner to file additional reply along with the certificates and the respondent, after affording an opportunity of personal hearing, redo the assessment to that extent in accordance with law. 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(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

+1 cc to M/s.S.Ramanathan Advocate sr 7801
+1 cc to M/s.Special Govt Pleader sr 9060

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