In the High Court of Judicature at Madras

Dated : 02.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.2264 of 2018 & WMP.No.2760 & 2761 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

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33746221992/2015-16 dated 15.12.2017 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
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. The petitioner has challenged the order dated 15.12.2017 assessing part of the petitioner's turnover for the relevant assessment year to higher rate of tax on the ground that the petitioner has not produced the actual certificate.

3. In my considered view, had the respondent afforded an opportunity of personal hearing to the petitioner, the above writ petition could have been avoided and the assessment 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 balance certificates. Further, the petitioner, by reply dated 04.5.2017, 24.5.2017 and 21.7.2017, enclosed necessary certificates.

5. However, the respondent failed to take note that the petitioner produced certificates from the Tamil Nadu State Transport Corporation, which would show the quantity supplied along with other details such as invoice numbers, date, tax value, etc. Further, the respondent failed to consider this issue while completing the assessment and stated that the actual certificate has not been enclosed. Had an opportunity been granted, the petitioner would have been able to explain as to what is the effect of such certificate as endorsed by the Tamil Nadu State Transport Corporation. Therefore, the assessment to that extent has to be redone.

6. The next issue is with regard to levy of penalty. As noticed above, in the show cause notice dated 13.4.2017, there has been a proposal to levy penalty under Section 27(4) of the State Act. The notice dated 13.4.2017 does 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.

7. 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.

8. 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 actual certificate.

9. 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.

10. Further, the learned counsel for the petitioner points out that the respondent failed to take into consideration the

reply given by the petitioner dated 21.7.2017 received by the respondent on 24.7.2017 wherein they had given the certificates for the total value of Rs.1,90,29,75,860/-.

11. However, in the impugned order, while referring to the certificates enclosed along with the reply dated 04.5.2017 and 24.5.2017, the respondent arrived the turnover about Rs.189 Crores and after deducting the tax amount, the total amount arrived at is Rs.179 Crores. Once again, tax has been deducted and the net turnover eligible for concessional rate of tax has been arrived at about Rs.170 Crores. This Court finds in the impugned assessment order that there is not even a reference to the petitioner's reply dated 21.7.2017 wherein they enclosed industrial input certificates to the value of Rs.44,30,640/-. Therefore, the assessment, to that extent, requires to be redone.

12. In the light of the above, the writ petition is partly allowed and the impugned assessment order is set aside in so far as it levies higher rate of tax for non production of actual certificate and the matter is remanded to the respondent for a fresh consideration giving liberty to the petitioner to file additional reply along with the actual certificate 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 WMP is 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 7802

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of 2018

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