In the High Court of Judicature at Madras

Dated : 06.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.2520 & 2521 of 2018
& WMP.Nos.3075 & 3076 of 2018

M/s.Raja Steels Private Limited,
rep.by its Director Mr.M.Raja
...Petitioner in both petitioner

Vs

The Assistant Commissioner (CT)
(FAC), Avarampalayam Circle,
Coimbatore-18.
...Respondent in both Petitioner.

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records in orders (i) TIN.33402220929/2006-07 and (ii) TIN.33402220929/2008-09, both dated 27.11.2017 passed by the respondent, quash the same and consequently direct the respondent to pass a fresh order on merits.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer 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. In these writ petitions, the petitioner has challenged the assessment orders under the provisions of the State Act for the years 2006-07 and 2008-09.

3. This Court finds that along with the objections dated 27.10.2010 to the revision notices dated 12.10.2010, the

petitioner enclosed details of TNGST sales for the year, CST sales for the year and consolidated sales for the year and also copies of audited financial statements for the year reflecting the sales as prescribed in their statements and stated that the exempted turnover proposed in the notices dated 12.10.2010 was mistakenly reported in the TNGST return form I, which were pertaining to the stock transfer for the months of January to March 2017 as well as for the months of September and October 2008. It was further stated that it has been excessively reported in the TNGST return additional to the CST return report by mistake. To clarify further, the petitioner stated that in the CST sales statement, all the details have been clearly mentioned pertaining to relevant moths. The petitioner also submitted necessary documents to support the stand taken by them with regard to the turnover declared in comparison with the annual report.

4. Subsequently, in the year 2012, the CST assessment has been completed by the predecessor officer of the respondent. However, in the impugned orders, the new officer, who had taken charge, has not even dealt with the reply given by the petitioner nor considered the fact that the turnover has been assessed under the Central Act, but merely stated that the objections filed by the dealer were not acceptable and that they were overruled.

5. It is seen that the proceedings are pending since 2010 and several letters have been sent by the dealer, which were referred to in the impugned assessment orders. Therefore, the respondent should have done a thorough exercise and then come to the conclusion as to whether the stand taken by the petitioner is proper or not. Without considering the objections, the respondent passed the orders in a single line.

6. Further, it has to be seen as to whether the levy of penalty was justified.

7. In this regard, the learned counsel for the petitioner would submit that when the disputed purchase turnover was available in the books of accounts of the dealer, there was no ground of willful non disclosure of the assessable turnover and therefore, the question of levy of penalty will not arise.

8. This aspect also has to be considered by the Assessing Officer.

9. For all the above reasons, the manner, in which, the assessment has been completed does not stand the test of law.

10. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for a fresh consideration. The petitioner is directed to submit their objections, which shall be consolidated objections enclosing all relevant records including the assessment made under the Central Act. On receipt of the objections, the respondent shall afford an opportunity of

personal hearing and redo the assessment in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT) (FAC), Avarampalayam Circle, Coimbatore-18.

+1cc to Mr.S.Siva Kumar, Advocate SR.No.9070
+1cc to Special Government Pleader(Taxes) SR.No.9932

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GN(21/02/2018)