In the High Court of Judicature at Madras
Dated : 07.2.2018
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.2598 & 2599 of 2018
& WMP.Nos.3217 & 3218 of 2018

Tvl.Viwa Drymix Private Ltd. ...Petitioner in both WPs

Vs

The State Tax Officer, O/o.The
Assistant Commissioner (ST),
Perundurai. ...Respondent in both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records relating to the orders passed by the respondent in TIN 33912925984 for the assessment years 2015-16 and 2016-17, both dated 15.9.2017, quash the same and consequently direct the respondent to provide an opportunity of personal hearing to the petitioner and to file their objections before the respondent.

For Petitioner : Mr.Niranjan Rajagopalan
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, which 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, has filed these writ petitions challenging the assessment orders passed under the State Act for the years 2015-16 and 2016-17.

3. The impugned orders have been challenged on the ground that the petitioner was not afforded adequate opportunity to submit their objections and that no opportunity of personal hearing was granted. It is further submitted that in the manufacturing process adopted by the petitioner, which involves the manufacture of wall putty, a cementious material, there is no invisible loss or manufacturing loss incurred in the manufacturing process and that this aspect of the matter could have been clarified by the petitioner only if they had been given an opportunity of personal hearing.

4. In paragraph 7 of the affidavits filed in support of these writ petitions, it is stated that on receipt of the show cause notices/revision notices, the Accountant of the petitioner - one Mr.R.Hari met one Mr.P. Govindaraju in the office of the respondent personally on 10.8.2017 and requested for further time to respond to the notices stating that filing of Form C and preparation of responses on other issues would require further time. It is further stated that the State Tax Officer, in the office of the respondent, accepted the request made by the petitioner's authorized representative and that the date of personal hearing would be intimated by post. The petitioner would further state that they did not receive any intimation and that only the assessment orders were passed and communicated to the petitioner. Further, though one Mr.Manivel, the Accountant of the petitioner, received the same, he misplaced them and the petitioner came to know about it only after the notices were issued by the respondent for recovery of the tax and penalty as quantified.

5. The learned Government Advocate would submit that as against the impugned assessment orders, the petitioner has an effective alternate remedy, that the petitioner should be relegated to avail the same and that the writ petitions should not be entertained.

6. After hearing the learned counsel for the petitioner and also perusing the materials on record, this Court finds that the impugned revision of assessment is pursuant to an inspection conducted in the place of business of the petitioner on 24.4.2017 by the officials of the Enforcement Wing, during which, it appears that certain discrepancies were found. The discrepancies pointed out were that the petitioner effected local purchase of goods and used them in the manufacturing of other goods, that they had not reported the input tax credit reversal for the manufacturing loss in Form WW filed for the years 2015-16 and 2016-17 and that as per Form WW filed for the years 2015-16 and 2016-17, the manufacturing loss was worked out as 9.51%. It was also pointed out that on verification of Form I and Form 1 returns, it is seen that the petitioner had not filed Form F for the stock transfer turnover. Therefore, there was a proposal to reverse the input tax credit under Section 19(4) of the State Act.

7. In so far as the calculation of percentage of manufacturing loss is concerned, this Court had an occasion to deal with similar matters and found that in most of the cases, an arbitrary figure has been arrived at by the Assessing Officer without any scientific approach. This Court, in the decision in the case of Interfit Techno Products Ltd. Vs. Principal Secretary/ Commissioner of Commercial Taxes [reported in (2015)

81 VST 389], issued certain directions as to how manufacturing loss/invisible loss has to be arrived at. The sum and substance of the directions being that the Assessing Officers should cause an inspection of the dealer's factory to acquaint themselves as to the manufacturing process and then arrive at the manufacturing loss, if any. In most of the cases, after such direction was complied with, the Assessing Officers have correctly arrived at the figure, which is far lower than what was proposed in the revision notices. The respondent should take note of the said decision of this Court while assessing manufacturing loss. Considering the fact situation, which has led to the impugned assessment orders and also the fact such a consequence is on account of the petitioner not being diligent, this Court is inclined to grant one more opportunity to the petitioner, however, subject to a condition.

8. Accordingly, the writ petitions are disposed of with a direction to the petitioner to pay 15% of the disputed tax for each of the assessment years within a period of three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they will be entitled to treat the impugned orders as show cause notices and submit their objections within a period of seven days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner, if the petitioner fails to comply with the condition of payment of 15% of the disputed tax for each of the assessment years within the time stipulated. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer, O/o.the Assistant Commissioner (ST),
Perundurai.

+2cc to M/s.G.R.Associates, Sr.No.9312, 9126
+1cc to Government Pleader Sr.No.10378

sm:20.2.2018

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