IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.01.2018

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.4885 OF 2012

AND

M.P.NO.1 OF 2012

M/s.Samas Engineering Corporation,
Represented by its Partner Ms.C.Saratha,
No.38, First Main Road, CIT Nagar,
Chennai 600 035. ...Petitioner

Vs.

The Assistant Commissioner (CT),
Nandanam Assessment Circle,
No.46, Greenways Road,
Chennai 600 028. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent in TNGST No.1580069/2005-2006 dated 29.07.2011 and the consequential order in TNGST No.1580069/2005-2006 dated 30.11.2011 and to quash the same insofar as it is against the petitioner and further direct the respondent to grant an reasonable opportunity to enable the petitioner to produce the records and thereafter pass orders in accordance with law.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mr.M.Hari Haran
Additional Government Pleader

O R D E R

Heard Mr.V.Sundareswaran, the learned counsel appearing for the petitioner and Mr.M.Hari Haran, the learned Additional Government Pleader appearing for the respondent.

2. The petitioner, who is a registered dealer on the files of the respondent, under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the 'TNGST Act'), is aggrieved by the order passed by the respondent, dated 29.07.2011, which is an assessment order for the assessment year 2005-2006, under the provisions of the TNGST Act, insofar as it denies the benefit for the transactions effected by the petitioner to 100% Export Oriented Unit ("E.O.U") and the re-sale turnover.

3. After the original assessment year was completed on 29.07.2011, which order was received by the petitioner on 26.09.2011, the petitioner filed an Application under Section 55 of the TNGST Act, to re-open the assessment, and along with the said Application, the petitioner enclosed Form A1 Abstract, Form A9 Abstract, Form XVII, Green card and Form H. The respondent entertained the Application under Section 55 of the TNGST Act, and while re-opening the assessment, granted the benefit to the petitioner, insofar as the Form XVII is concerned, but, declined to accept the claim made by the petitioner for sales made to 100% E.O.U. and the resale turnover.

4. Thus, the question would be as to whether, the respondent is denuded of his power to examine those two issues, after re-opening the assessment under Section 55 of the TNGST Act. This question came up for consideration before this Court, in the case of M/s. Aachi Masala Foods Ltd., Vs. The Assistant Commissioner (CT), in W.P.No.2413 of 2017 dated 01.02.2017. In the said case, the Assessing Officer took a stand that, by following the circular, dated 28.02.2001, the Assessing Officer can consider only Form XVII declaration and nothing more. This contention was repelled in the said order, and it was held that, once the issue is re-opened or one ground or other, the Assessing Officer would have power to consider the said documents, which have already been filed by the dealer. The operative portion reads as follows :-

> " 13. With regard to the other issue, documents submitted qua export sales, the respondent/Assessing Officer's stand, as articulated by her counsel, is that she has no power to revise the assessment and to accept documents, at this stage, in respect of export sales. Even I were to accept this stand of the respondent/Assessing Officer, it cannot come in the way of examining the tenability of such document, if submitted, in my view of the fact that once the issue is re-opened on one

ground or other, the respondent/Assessing Officer would have power to consider the said document, which in any case have already been filed by the petitioner. I see no difficulty in the respondent/Assessing Officer considering the export sales documents, once the assessment is re-opened for considering the C-Forms.

14. In view of the above, the impugned order is set aside. The respondent/Assessing Officer shall redo the assessment, after considering the documents and declarations placed before her. The respondent/Assessing Officer shall pass a fresh assessment order, after affording an opportunity to the authorized representative of the petitioner. Needless to say the respondent/Assessing Officer will pass a speaking order, a copy of which will be supplied to the petitioner. "

5. In the light of the above, the respondent committed an error, by assuming that his power is restricted only to Form XVII, and having exercised the power under Section 55 of the Act and re-opened the assessment, it is well open to him to consider all the issues raised by the petitioner.

6. Thus, for the above reasons, this Writ Petition is partly allowed and the impugned order, dated 30.11.2011, insofar as the findings rendered by the respondent with regard to sales to 100% E.O.U. and re-sale turnover are set aside and the matter is remanded to the respondent to redo the assessment under the aforesaid two heads after perusing the documents produced by the petitioner. While redoing the assessment, the respondent shall also consider the representation of the petitioner, dated 25.11.2011 and afford an opportunity of personal hearing to the authorized representative to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Nandanam Assessment Circle,
No.46, Greenways Road,
Chennai 600 028.

- 1 cc to Mr.V.Sundareswaran, Advocate Sr.No.7094
- 1 cc to The Special Government Pleader, (Tax) Sr.No.7022

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CO(GJ)
RRI 27/02/2018