IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.13316 TO 13318 OF 2018
&
W.M.P.NOS.15681 TO 15683 OF 2018

M/s.Asma Exports
represented by its Partner
No.25, Moore Street
Chennai - 600 001 ... Petitioner in all WPs

Vs.

The Commercial Tax Officer
Harbour Assessment Circle
Chennai ...Respondent in all WPs

Writ petitions filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari calling for the records of the respondent in his proceedings in CST 65384/2008-09, CST 65384/2010-11 and CST 65384/2011-12 quash the assessment order dated 30.04.2018 passed therein.

For Petitioners : Mr.P.V.Sudakar,

For Respondent : Ms.G.Dhanamadhri
Government Advocate (Taxes)

COMMON ORDER

Heard Mr.P.V.Sudakar, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2. I carefully considered the submissions made on either side and the material papers filed along with the writ petitions and the para wise instruction given by the respondent to the Commissioner of Commercial Taxes vide communication dated 20.06.2018, which has been placed before this Court by the learned Government Advocate. The assessment for the years 2008-09, 2010-11 and 2011-12 under the Central Sales Tax Act, 1956

has been reopened on the ground that the petitioner has not filed the requisite supportive documents to prove that the transactions were export sales. While the assessment completed at the first instance in the year 2013, the Assessing Officer specifically recorded that the petitioner has produced necessary export documents, namely bill of lading, sales invoice, packing list, Airway bill and after verification has found them in order.

3. It appears that an VAT audit was conducted in the business premises of the petitioner, which paved the way for the issuance of revision notice dated 14.02.2018 proposing to reopen the assessment doubting the veracity of the stand taken by the dealer that there were exports. This was followed by another notice dated 23.04.2018 termed as "final notice". The petitioner has given his explanation and resubmitted the documentary evidence and requested the Authority to verify the same and drop the proceedings. The respondent in the impugned proceedings accepts that the petitioner has filed export documents, but would state that the petitioner has not filed all the supportive documents to prove direct export sale. However, the respondent has not explicitly stated in the impugned order as to what are the supportive documents required by him to examine the genuineness of the sale.

4. In the parawise instruction given by the respondent, list of documents has been mentioned. If those documents are required, nothing prevented the respondent to issue a notice to the dealer specifying the documents, which are required to be produced. By way of a written submission or counter affidavit, the impugned order cannot be improved. The learned counsel has drawn the attention of this Court to the certificate given by their banker M/s.Canara Bank, Thousand Lights Branch dated 05.05.2018, which is to certify the export realization for the financial year 2008-09, 2010-11 and 2011-12. However, this having been issued after the impugned Assessment Order, though in possession of the petitioner, prior to the respondent passed the impugned Assessment Order on 08.05.2018, has to be taken into consideration.

5. Thus for the above reasons, the petitioner is directed to treat the impugned Assessment Order as show-cause notice and submit their further explanation enclosing all documents including the bank realization certificate before the respondent in person within one week from the date of receipt of a copy of this order. On receipt of the same, the respondent shall verify the documents, afford an opportunity of personal hearing to the petitioner and take a independent decision in the matter uninfluenced by anything contained in the audit or inspection report.

The writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa

To

The Commercial Tax Officer
Harbour Assessment Circle
Chennai

+1cc to Mr.P.V.Sudakar, Advocate, S.R.No.41780
+1cc to the Special Government Pleader, S.R.No.42436

WP.Nos.13316 to 13318 of 2018 &
W.M.P.Nos.15681 to 15683 of 2018

KK(CO)
CS/16/07/18