IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13692 & 13693 of 2018
and
W.M.P.Nos.16153 & 16154 of 2018

Tvl.Samah Enterprises,
Represented by its Proprietor,
M.Abdul Rasheed,
No.153, Angappa Naicken Street,
Chennai-600 001. .. Petitioner in both W.Ps'

Versus

The Commercial Tax Officer,
Harbour Assessment Circle,
Chennai-1. .. Respondent in both W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records on the files of the respondent in CST.65084/2010-11 and 2011-12 dated 30.04.2018, respectively and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.G.Dhana Madhri
(in both W.Ps') Government Advocate

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate, who accepts notice on behalf of the respondent, in both the writ petitions. With the consent of the learned counsel appearing on either side, the writ petitions are taken up for disposal.

2.One more reason for doing so is on account of the glaring error, which is apparent on the face of the impugned orders. The petitioner has challenged the assessment orders dated 30.04.2018 under the provisions of the Central Sales Tax Act, 1956, for the years 2010-11 and 2011-12. The impugned assessment orders are the revision of assessments. Earlier, the Predecessor Officer has completed the assessment and passed orders dated 28.01.2014. In the said order, the Officer has recorded a finding that the dealer has exported direct export sales and the bill of lading, sales invoice packing list, airway bill and shipping bill were verified and found to be in order and the final and taxable turnover was determined. After about four years, a new Incumbent Officer has issued a revision notice dated 14.02.2018, alleging that the petitioner has produced only the bill of lading and not produced export documents such as purchase invoice, sales invoice, packaging list, payment receipt and all other supporting documents. In the revision notice, dated 14.02.2018, the respondent has not stated that the statement made by her predecessor Officer, while completing assessment vide order dated 28.01.2014 is false or incorrect.

3.Be that as it may, the petitioner had filed the export documents along with the representation dated 14.03.2018. The entire set of documents have been filed in the typed set of papers, which runs to more than 100 pages. These documents have been received by the respondent, by acknowledging in the letter delivery book, vide acknowledgment dated 14.03.2018. Though the respondent had acknowledged the receipt of the documents, without proceeding further with the matter, the respondent had issued another notice dated 23.04.2018, terming it as a final notice. In the said final notice, the respondent refers to the petitioner's reply dated 14.03.2018, but has not chosen to deal with the same in the notice. Once again, the petitioner has appeared before the assessing authority and produced all the documents. The respondent, while completing the assessment, has accepted the fact that the petitioner has produced the export documents, especially the custom clearance records. However, the respondent states that on verification of those documents exemption claimed was disallowed. The respondent has not assigned any reasons as to why the claim of exemption, which was accepted by the Predecessor Officer was disallowed, even after verification of the export documents produced by the petitioner. If, for any reason, the respondent finds any discrepancy in the record that should have been clearly spelt out in the impugned order.

4.Thus, I am fully convinced that the impugned assessment orders are the outcome of the total non-application of mind and devoid of reasons. These are sufficient grounds to set aside the same.

5.Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded back to the respondent with a direction to take note of the export documents and also findings recorded by her Predecessor Officer in the assessment orders dated 28.01.2014 and pass appropriate orders on merits in accordance with law. No costs. Consequently connected Miscellaneous Petitions is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

ia/srk
To
The Commercial Tax Officer,
Harbour Assessment Circle,
Chennai-1.

+1 CC to Mr.R. Senniappan, Advocate sr 35394.
+1 CC to The Spl. Govt. Pleader sr 35978.

W.P.Nos.13692 & 13693 of 2018
and
W.M.P.Nos.16153 & 16154 of 2018

KK(CO)
SP(21/06/2018)