In the High Court of Judicature at Madras

Dated : 20.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.13176 of 2018 & WMP.No.16175 of 2018

Tvl.B J & P Engineers Private Limited,
rep.by its Director J.Jayakumar ...Petitioner

Vs

The Commercial Tax Officer,
Thiruvanmiyur Assessment Circle,
Plot No.141, Burma Colony, I Floor,
I Main Road (L&T Road), Perungudi,
Chennai-96. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in CST No.980529/2016-17 dated 08.3.2018, quash the same and direct the respondent herein to redo assessment in accordance with the provisions of the Act and further direct the respondent to adjust the central sales tax payable of Rs.2,24,211/- for the assessment year CST No/980529/2016-17 from the refund due to the petitioner for the assessment year CST 2012-13.

For Petitioner : Mr.A.N.R.Jayapratap

For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Heard both.

2. The petitioner has filed this writ petition challenging the assessment order dated 08.3.2018 under the provisions of the Central Sales Tax Act, 1956 for the year 2016-17.

3. Two issues arise in the impugned assessment namely (i) reversal of input tax credit in respect of inter-state sales effected by the petitioner to SEZ units located outside the State and (ii) demand of differential tax on the ground of non filing of declaration forms in respect of inter-state sales and other sales.

*** The learned counsel for the petitioner submits that for the assessment year 2012-13, there is some amount lying to the credit of the respondent and that the same may be adjusted as**

against the liability arising for the year 2016-17 in terms of the impugned order and subject to production of declaration forms, the petitioner will file rectification petition and claim for refund, if necessary. With regard to the issue pertaining to sales effected to SEZ units located outside the State, the petitioner has paid the tax. However, the legality of such a demand is now pending before the Hon'ble Division Bench. Therefore, liberty is granted to the petitioner to approach the Department for refund, if admissible, on the legal issue being settled in favour of the dealers by the Division Bench.

5. So far as the first contention is concerned, in the para wise instructions given to the learned Government Advocate, the respondent stated that the assessment for the year 2012-13 has been selected by the Commissioner of Commercial Taxes for a detailed scrutiny under Section 22(3) of the Tamil Nadu Value Added Tax Act, 2006 and it is still pending and since the assessment is yet to attain finality, the adjustment of Rs.2,83,716/-, which was shown as excess amount in the assessment order dated 08.9.2016 (A.Y. 2012-13), cannot be made.

6. Initially, the petitioner's case is that no such scrutiny assessment has been commenced by the respondent.

7. However, today, when the case is taken up for hearing, a copy of the summons issued by the respondent dated 14.7.2017 in Form PP has been produced wherein 10 documents have been called for and the summons had been received by the petitioner on 17.7.2017.

8. According to the petitioner, all the 10 documents have been produced for scrutiny of the respondent.

9. In the light of these developments, to meet the ends of justice, the writ petition is disposed of with the following directions :

***(i) The respondent is directed to finalize the proceedings initiated in respect of the assessment year 2012-13 after affording an opportunity of personal hearing to the petitioner within a period of three weeks from the date of receipt of a copy of this order;**

(ii) Till then, no coercive action shall be initiated pursuant to the impugned assessment order dated 08.03.2018;

(iii) The petitioner is at liberty to work out their rights pursuant to the orders to be passed by the respondent in respect of the assessment year 2012-13;

(iv) The petitioner is permitted to file rectification

petition along with declaration forms and other forms and if the same is done, the Assessing Authority shall consider and rectify the assessment.

(v) Since the dealer has paid the tax demanded in respect of the sales effected to SEZ units located outside the State and since the issue is now pending before the Hon'ble Division Bench, in the event the legal issue is decided in favour of the dealers, liberty is granted to the petitioner to approach the Assessing Officer for refund, if found admissible; and

(vi) In the event there is no change or revision in the assessment for the year 2012-13, the request made by the petitioner for adjustment of excess tax shall be considered for being adjusted as against the demand for the assessment year 2016-17.

No costs. Consequently, the connected WMP is Closed.

Sd/-
Assistant Registrar(CS-VI)
Dated: 31/07/2018

*** Substituted and modified the Order of this Court dated 20/09/2018 madein WMP.No.26507/18 in WP.No.13716/2018**

Sd/- Assistant Registrar (CS VI)
Dated: 04/10/2018

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Thiruvanmiyur Assessment Circle,
Plot No.141, Burma Colony, I Floor,
I Main Road (L&T Road), Perungudi,
Chennai-96.

To be Substituted to the Order already despatched on 28/08/2018

+1 cc to MR. ANR. Jayaprathap, Advocate Sr.**66331**
+1cc to the Special Government Pleader(Taxes), S.R.No. 65943

WP.No.13716 of 2018&
WMP.No.16175 of 2018

(CS-VI)
EU(04/10/2018)
GN(04/10/2018)