In the High Court of Judicature at Madras

Dated : 19.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.13954 of 2018 & WMP.Nos.16483 & 16484 of 2018

M/s.Solar Chemicals Pvt. Ltd.,
now amalgamated with M/s.
Kiran Global Chem Limited,
rep.by its Authorized Signatory
Mr.R.Desikumar ...Petitioner

Vs

The Assistant Commissioner (ST),
Perundurai Assessment Circle,
Perundurai. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in TNGST : 2922324/1999-2000 dated 02.5.2018 and quash the same as passed contrary to the provisions of the Tamil Nadu General Sales Tax Act, 1959 and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.M.Hariharan, AGP

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner challenged the proceedings of the respondent dated 02.5.2018, which, in effect, is an order of assessment for the year 1999-2000 under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, 1959 (hereinafter called the TNGST Act, 1959). By the impugned order, the respondent demanded the balance tax of Rs.11,82,894/- and penalty to the tune of Rs.17,74,341/-.

3. The challenge to the impugned proceedings is on the

ground of lack of jurisdiction. The correctness of the said stand taken by the petitioner is tested on the facts of the case and also considering the para wise instructions given by the Assessing Officer to the Commissioner of State Taxes with a copy marked to the Additional Government Pleader (Sales Taxes), Chennai.

4. The petitioner filed an appeal before the Appellate Assistant Commissioner (CT), Erode challenging the assessment order dated 22.3.2005. The Appellate Authority allowed the appeal, by order dated 13.10.2005, set aside the order of assessment dated 22.3.2005 and remanded the matter to the respondent with a direction to wait and watch the outcome of the proceedings of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai and proceed thereafter as per the TNGST Act, 1959 or the Central Sales Tax Act, 1956, as the case may be, after giving a reasonable opportunity of being heard. The Customs, Excise and Service Tax Appellate Tribunal, by an order dated 01.2.2012, allowed the appeal filed by the assessee thereby setting aside the order dated 29.2.2004 passed by the Commissioner of Central Excise (Appeals), Salem and directed the Original Authority to give the relied upon documents to the representative of the petitioner. The assessee was also directed to submit a reply within three weeks thereafter. There was also a direction to complete the adjudication process expeditiously, as the case pertains to the year 1998-2000.

5. Though such a specific direction was given by the Customs, Excise and Service Tax Appellate Tribunal, till date, the Original Authority under the Central Excise Act, 1944 has not passed final orders. In this regard, the Assessing Officer addressed the Superintendent of Central Tax, Erode III Range by letter dated 07.7.2017 requesting for copies of fresh orders that were passed in the petitioner's case pursuant to the remand order passed by the Customs, Excise and Service Tax Appellate Tribunal. The Superintendent of Central Tax, Erode III Range, in turn, addressed the respondent stating that orders have not yet been passed and that the same could not be furnished as requested by him.

6. Thus, the question would be as to whether the respondent can pass fresh orders reiterating the earlier order, which, in fact, was set aside by the Appellate Assistant Commissioner (CT), Erode. The answer to this question would be definitely 'No'. The respondent is bound by the directives issued by the Appellate Assistant Commissioner (CT), Erode and he is required to wait and watch the outcome of the proceedings before the Customs, Excise and Service Tax Appellate Tribunal. The appeal has been ultimately allowed and the matter is now pending before the Range Officer under the Central Excise Act, 1944. Therefore,

necessarily, the respondent has to wait the outcome of those proceedings and then proceed further as per the directives of the Appellate Assistant Commissioner (CT), Erode. Since the demand under the provisions of the TNGST Act, 1959 was set aside, the question of passing fresh orders on the same lines does not arise and moreover the petitioner's immovable property cannot be the subject matter of attachment, because the demand itself was set aside. It is well open to the respondent to proceed afresh after the Authority under the Central Excise Act, 1944 passes an order in terms of the directives of the Appellate Assistant Commissioner (CT), Erode. Furthermore, this Court finds that most of the portions of the impugned order dated 02.5.2018 are a verbatim reproduction of the order of assessment, which was set aside by the Appellate Authority. For all the above reasons, the impugned order cannot be sustained; and equally the proceedings dated 28.9.2005 addressed to the Sub-Registrar, Uthukuli.

7. Accordingly, the writ petition is allowed and the impugned order dated 02.5.2018 is set aside. Liberty is granted to the respondent to proceed further after a decision is taken by the Authority under the Central Excise Act, 1944 as directed by the Appellate Assistant Commissioner (CT), Erode. The order of attachment dated 28.9.2005 on the immovable properties of the petitioner is directed to be lifted forthwith. The petitioner is directed to produce a copy of this order before the Sub-Registrar, Uthukuli, who shall, on receipt of the same, shall delete the encumbrance on the petitioner's immovable properties. No costs. Consequently, the connected WMPs are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To
1. The Assistant Commissioner (ST), Perundurai Assessment Circle, Perundurai.

2. The Sub Registrar , Uthukuli.

3. The Appellate Assistant Commissioner(CT)
Erode.

+1 CC to Mr.P. Rajkumar, Advocate sr 38154.
+1 CC to Spl. Govt. Pleader(T) st 38822.

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SKS(CO)
SP(03/07/2018)