In the High Court of Judicature at Madras

Dated : 22.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.15036 of 2018 & WMP.No.17804 of 2018

M/s.Alkraft Thermo Technologies
Pvt.Ltd., rep.by its Chief Financial
Officer Mr.P.Sirajudeen ...Petitioner

Vs

The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
No.127, II Floor, Yadhaval Street,
Padi, Chennai-50. ...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 of respondent's impugned order dated 05.4.2018 bearing reference CST/ 651756/2010-11, quash the same and further direct the respondent to pass a revised assessment order on sales returns for the assessment year CST 2010-11 by affording an opportunity of personal hearing to produce the documents.

For Petitioner : Mr.R.Anish Kumar

For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a manufacturer and dealer of aluminum radiators, inter coolers and oil coolers and registered with the respondent Department under the provisions of Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956.

3. The assessment under the Central Enactment for the year 2010-11 was completed by the impugned order dated 05.4.2018 for a total and taxable turnover of Rs.24,07,79,464/- and Rs.14,52,29,077/- respectively. The turnover, which was covered

by C-Forms, was assessed at 2% and the turnover, which was not covered by C-Forms and F forms, sales without C Forms, sales returns disallowed, was assessed at 12.5%.

4. Originally, for the relevant assessment year, the petitioner submitted CST sales turnover along with C Forms and supporting documents and on verification, an assessment order dated 27.2.2015 was passed. The petitioner submitted a representation dated 06.7.2015 enclosing further C-Forms and F Forms and sought for revision of assessment based on the C Forms and F Forms, followed by a reminder dated 02.6.2017. The respondent considered the same, reduced the tax liability and ultimately, the taxable turnover was determined vide revised assessment order dated 05.4.2018 without properly considering the sales returns.

5. The petitioner challenged the assessment order of similar nature relating to the year 2014-15 by filing a writ petition in W.P.No.32843 of 2016. The said writ petition was allowed by order dated 20.9.2016 by setting aside the order in so far as it rejects the issue relating to the sales return and the return of stock transferred goods and directed to redo the assessment. In the aforesaid order, this Court observed as follows:

> "6. ...However, the Assessing Authority, being a statutory authority, would also have the power to redo the assessment, more so, when the Court directed to redo the matter. Thus, if the petitioner has made a statement with regard to the sales return and cash discount and produced the necessary documents, it is always open to the assessing officer to take into consideration those documents and take a decision in the matter. Therefore, the respondent need not restrict himself only with regard to the C-Forms and F-Forms and if the petitioner is legally entitled for any other relief then that may be considered.
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> 7. Accordingly, the Writ Petition in WP.No. 32843/2016 is allowed and the impugned order, insofar as it has rejected the petitioner's case relating to Sales Return, Cash Discount and return of stock transferred goods are concerned, are set aside and the respondent is directed to redo the assessment on these heads afresh, after affording an opportunity of personal hearing to the petitioner."

6. It is seen that the assessment pertains to the year 2010-11 and so long, the assessment could not be completed. Hence, this Court is of the view that the petitioner can be given one more opportunity, however, subject to a condition.

7. Accordingly, the writ petition is disposed of with a direction to the petitioner to pay 25% of the tax demanded as computed in the impugned assessment order, within a period of 15 days from the date of receipt of a copy of this order. If such payment is made, the petitioner is entitled to treat the impugned order as a show cause notice and submit his objections. On receipt of the objections, the respondent shall redo the assessment under the head 'sales returns', based on the representations of the petitioner dated 06.7.2015, 12.3.2017 and 02.6.2017 for the year CST 2010-11, on merits and in accordance with law. It is made clear that if the petitioner fails to comply with the said conditional order, the benefit of this order would not enure to the petitioner and the writ petition would stand dismissed automatically without any further reference to this Court. No costs. Consequently, the connected WMPs are closed.

RS

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Pattaravakkam Assessment Circle,
No.127, II Floor, Yadhaval Street,
Padi, Chennai-50.

+1cc to Government Pleader SR.No.40004
+1cc to Mr.R.Anish Kumar, Advocate SR.No.39704(19/07/2018)

WP.No.15036 of 2018&
WMP.No.17804 of 2018

KK(CO)
GN(06/07/2018)