IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.16872 of 2013
and
M.P.No.1 of 2013

M/s.Neycr India Limited,
Rep. by its Senior Manager (Finance),
Mr.T.Mani,
Vadalur,
Cuddalore District. ...Petitioner

Vs.

The Assistant Commissioner (CT),
Cuddalore Taluk Assistant Circle,
Manjakuppam,
Cuddalore - 607 001. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records comprised in impugned order in TIN No.33084400016/2011-12, dated 23.05.2013 on the file of the respondent, and to quash the same.

For Petitioner : Mr.Shanmugham for
: Mr.Mohammed Shaffiq

For Respondent : Mr.M.Hari Haran
Additional Government Pleader

ORDER

Heard Mr.Shanmugham, the learned counsel appearing for Mr.Mohammed Shaffiq, the learned counsel for the petitioner and Mr.M.Hari Haran, the learned Additional Government Pleader for the respondents.

2. The petitioner, which is a Sick Industrial Company even as on date, has approached this Court, by way of this Writ Petition, challenging the order of assessment, dated 23.05.2013, passed by the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2011-12.

3. The respondent issued a notice, dated 21.03.2013, stating that for non-payment of tax, notice for recovery was issued in Form-U to the petitioner's bankers as well as the petitioner on 10.03.2012, and on receipt of the notice, the petitioner stated that their Factory was damaged due to Thane Cyclone during the month of December 2011, and the damages are relating to the building, machinery and finished goods, and the estimated damages due to cyclone is about Rs.7.68 crores.

4. Further, it was stated in the notice, dated 21.03.2013, that the petitioner have not furnished the particulars of damage, in detail, and in the absence of separate details of damages, the admissible claim of input tax credit is not capable for verification. Therefore, it is proposed to reverse the claim of input tax credit on the entire amount of Rs.7.68 crore and notice dated 21.02.2013 was issued. On receipt of the notice, the petitioner filed a letter addressed to M/s.National Insurance Ltd., Chennai, in which, particulars of estimated damages on account of cyclone "Thane" were made known to the respondent.

5. By referring to the afore said letter, the respondent would state in the notice, dated 21.03.2013 that the petitioner is not eligible to claim input tax credit on the raw material, semi-finished and finished goods and worked out the claim for input tax credit and proposed to reverse the same. The petitioner was granted 15 days time for filing their objections. However, it appears that the petitioner did not effectively participate in the assessment proceedings, but, merely sent a letter, stating that they have availed input tax credit of Rs.2,78,831.00 only and requested not to demand anything from the petitioner. The respondent could have issued a notice of personal hearing to the petitioner, and called upon the petitioner to produce books to ascertain as to what would be the eligible input tax credit. However, without doing so, the respondent completed the assessment and passed the impugned order, which has been challenged in this Writ Petition, and stayed by the Court and the matter is pending since 2013.

6. The petitioner's contention is that, they are unaware, as to how, reversal of input tax credit was determined at Rs.57,93,862/-. However, there was such proposal made in the notice, dated 21.02.2013. Therefore, the respondent cannot be blamed for proceeding to complete the assessment, in the manner, done by him, as impugned in this Writ Petition.

7. The respondent seeks to justify his action by way of counter affidavit, in which, reference has been made to Section 19 (9) (1) of the TNVAT Act. In para No.9 of the counter affidavit, the respondent would state that the petitioner has

not properly explained the purchase of material on wrong input tax credit claimed, and in the absence of details, the respondent passed the impugned assessment order.

8. Thus, the petitioner has to be blamed for not having effectively participated in the assessment proceedings and producing details and documents, relating to the transaction. Further, considering the fact that the petitioner was declared as Sick Industrial Undertaking, and a Scheme for Rehabilitation appears to be in vogue, this Court is inclined to give one more opportunity to the petitioner/assessee to appear before the Assessing Officer and place all materials before him for reconsideration.

9. For the reasons stated herein above, this Writ Petition is disposed of, by directing the petitioner to treat the impugned assessment order as show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order and on receipt of the objections, the respondent shall fix a date for personal hearing, on which date, the authorized representative of the petitioner shall appear, produce documents/details and answer queries that may be posed by the Assessing Officer, and thereafter, the Assessing Officer shall redo the assessment in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dna

To

The Assistant Commissioner (CT),
Cuddalore Taluk Assistant Circle,
Manjakuppam, Cuddalore - 607 001.

+1cc to Mr.Mohamed Shattiq, Advocate, S.R.No.5865
+1cc to the Government Pleader, S.R.No.5771

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RRK(22/02/2018)