IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.A.No.2714 of 2018 and
CMP No.22350 of 2018

Arunnachal Impex Private Ltd.
Rep. by its Managing Director,
S.Kalaivani
No.192/237, Thambu Chetty Street,
Parrys, Chennai - 600 001. ...Appellant/Petitioner

Vs.

Commercial Tax Officer
Harbour Assessment Circle,
No.116, Angappan Naicken Street
Chennai-600 001 ...Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Common order passed by this Court dated 05.10.2018 passed in W.P.No.21614 of 2018 .

Prayer in W.P.No.21614 of 2018:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified mandamus to call for the impugned proceedings of the respondent passed in TIN 33250021294/ 2009-2010 dated 25.7.2018 and quash the same , and further direct the respondent to redo the assessment by considering the reply dated 28.12.2017 in respect of non-liability to tax on the exempted goods even if there is difference on exempted turnover as per the balance sheet and monthly returns in accordance with law.

For Appellant : Mr.N.Murali
For Respondent : Mr.Md.Saffiq,
Special Government Pleader

J U D G M E N T

(Delivered by T.S.SIVAGNANAM.J.,)

This appeal by the appellant is directed against the Common order dated 05.10.2018 passed in W.P.No.21614 of 2018.

2. The appellant filed the writ petition challenging the order passed by the respondent dated 25.07.2018 being the assessment order under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for brevity "TNVAT Act") for the assessment year 2009-10.

3. The petitioner, who is the registered dealer on the file of the respondent under the provisions of TNVAT Act and Central Sales Tax Act, 1956 was aggrieved by the assessment order on the ground that there is no real suppression of sales pertaining to the amount pointed out in the assessment order and it was due to some mistake committed in the balance sheet. Reference was also made to the assessment order, which was completed under Section 22(2) of the TNVAT Act dated 02.07.2015, wherein, the Assessing Officer accepted the returns filed by the appellant and found that there is no suppression. The assessment order was re-opened by issuing revision notices dated 20.11.2017 and 15.12.2017, for which, the appellant had submitted its reply dated 28.12.2017. Personal hearing was offered and assessment has been completed.

4. The learned counsel for the appellant would vehemently contend that there was an inspection by the VAT Audit team on 09.09.2005 and found the difference in purchase turnover on comparison of the balance sheet and the monthly returns. Based on which, notice dated 20.11.2017 was issued, for which, the petitioner had submitted a proper reply on 28.12.2017. The appellant contended that there is no difference in purchase turnover and the difference is due to the production of un-rectified balance sheet at the time of inspection and that the difference in turnover has been explained on the basis of the certificate issued by the Chartered Accountant filed along with the reply dated 28.12.2017 and it pertains only to exempted items and there is no alleged suppression of sales as contended in the revision notice dated 20.11.2017. Further, it is contended that the Assessing Officer ought to have taken note of the bonafides of the appellant and the Certificate issued by the Chartered Accountant and more importantly, the difference in purchase turnover were all related to exempted items. Therefore, it is submitted that the assessment requires to be set aside and one opportunity has to be granted to the appellant and the assessment should be re-done.

5. We have heard Mr.Mohammad Saffiq, learned Special Government Pleader on the above submissions made by the learned counsel for the appellant.

6. Admittedly, what is now projected before us as well as before the Writ Court were all factual details, much of which are disputed. In fact, the Assessing Officer noted the objections filed by the dealer and has completed the assessment giving reasons. Furthermore, the Assessing Officer filed a counter affidavit and the grounds raised by the appellant have been dealt with in paragraph Nos. 10 to 12 of the counter affidavit.

7. We have gone through those contentions raised by the Assessing Officer and we find that there are serious disputed questions of facts, which obviously cannot be adjudicated by the Writ Court. Therefore, we are in complete agreement with the learned Writ Court in not entertaining the writ petition but granting liberty to the appellant to file appeal before the Appellate Authority and also fixing a time frame within which it should be done and in the interregnum giving a protective order in favour of the appellant. Thus, there is no error in the order passed by the Writ Court.

8. Accordingly, the appeal filed by the appellant is dismissed and the time for preferring appeal stands extended by a period of four weeks from the date of receipt of a copy of this judgment and till then, the respondent shall not take any coercive action against the appellant. However, if the appellant fails to file appeal before the Appellate Authority within time frame, the benefit of the protective order granted by us will not enure in favour of the appellant and the Assessing Officer would be free to initiate proceedings for recovery of the tax and penalty as quantified in the assessment order dated 25.07.2018. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ska/svki

To

The Commercial Tax Officer
Harbour Assessment Circle,
No.116, Angappan Naicken Street
Chennai-600 001.

+1 cc to Mr.N.Murali, Advocate Sr.No.85752
+1 cc to The Special Government Pleader(Taxes), Sr.No.86383

W.A.No.2714 of 2018

EV(CO)
CSL/11.01.2019