IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.32222 of 2018
and
W.M.P.No.37466 of 2018

M/s.Universal Engineers Chennai Pvt Ltd.,
Represented by its Director
Ms.V.Hamsa, Age 51, Female,
21A, North Phase,
SIDCO Industrial Estate,
Ambattur,
Chennai-600098. ...Petitioner

Vs

The Assistant Commissioner (ST)
Earlier The Assistant Commissioner (CT)
Korattur Assessment Circle,
52/98, Yadaval Street
Padi, Chennai - 600 050. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TNVAT/33481325672/2010-2011 dated 24.11.2016 and quash the same as passed contrary to the principles of natural justice and also contrary to the judgment of the Hon'ble Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintadripet Assessment Circle reported in 59 VST 256 affirmed by the Hon'ble Division Bench of the Madras High Court in the case of Assistant Commissioner (CT), Broadway Assessment Circle, Chennai vs Bairav Trading Company reported in 96 VST 315.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

The petitioner is aggrieved against the order of assessment dated 24.11.2016 passed in respect of assessment year 2010-2011.

2. Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate appearing for the respondent.

3. The challenge made against the impugned order of assessment is on the following grounds:

a) The first notice of proposal dated 22.11.2013 does not indicate the reason, on which, the impugned order of assessment was passed viz., that the assessee did not prove the movement of goods from one end to other end, in respect of sales made by M/s.King Iron Trading Pvt Ltd; that payment details was not furnished by the dealer in respect of sales with Universal Engineers and that Annexure-I and Annexure-II are not matching with one another.

b) The notice of proposal dated 22.11.2013 does not indicate the proposal to impose penalty, whereas the impugned order imposes penalty. Thus it is in violation of principles of natural justice.

c) The second notice of proposal dated 28.12.2015 issued to the petitioner was not at all referred to in the impugned proceedings, for which, the petitioner has already filed a reply dated 18.01.2016.

d) The impugned order was not at all served on the petitioner, even though it was made on 24.11.2016.

4. The learned counsel appearing for the petitioner reiterated the above contentions, after inviting this Court's attention to the relevant proceedings viz., the notice dated 22.11.2013, the reply dated 24.12.2013, further notice dated 28.12.2015, the reply dated 18.01.2016 and the impugned order dated 24.11.2016.

5. The learned Government Advocate appearing for the respondent submitted that the Assessing Officer has passed the impugned order after considering the objections raised by the petitioner and therefore, the petitioner cannot have any grievance.

6. Perusal of the impugned notice of proposal dated 22.11.2013 would show that it does not anywhere indicate, as to what the proposal, the Assessing Officer was intending to,

except giving certain facts and figures in the tabular column. Apart from the above said fact, evidently, the said notice also does not indicate that the Assessing Officer has proposed to impose penalty. The petitioner filed their reply on 24.12.2013, thereafter, another notice was issued on 28.12.2015, for which the petitioner sent a reply on 18.01.2016 stating that they have already submitted their reply on 24.12.2013 along with supportive documents and therefore, the proposal may be dropped. However, the Assessing Officer has passed the impugned assessment order by stating two reasons viz., (i) that the assessee did not prove the movement of goods from one end to other end, in respect of sales made by M/s.King Iron Trading Pvt Ltd and (ii) that payment details was not furnished by the dealer in respect of sales with Universal Engineers and that Annexure-I and Annexure-II are not matching with one another.

7. Perusal of the reasons stated in the impugned order would show that the Assessing Officer did not make the proposal for reversing the ITC. On the other hand, as stated supra, the Assessing Officer has only given certain facts and figures in the tabular column without stating those two reasons, which are stated as the first time in the impugned order. Therefore, I find that the very order of assessment passed based on those two reasons, is in violation of principles of natural justice, since no notice of proposal was issued to the petitioner stating those reasons for imposing tax. Further, it is seen that the said notice of proposal does not indicate that the Assessing Officer has proposed to impose penalty as well. In the absence of such notice, the Assessing Officer passed the impugned order of assessment imposing penalty also at the rate of 150%. Therefore, the imposition of penalty without any notice of proposal to that effect, violates the principles of natural justice and consequently, cannot be sustained. Above all, no personal hearing was given to the petitioner before concluding the assessment. Therefore, I find that on all these reasons the impugned assessment order cannot be sustained and consequently, the matter has to go back to the Assessing Officer to re-do the assessment after hearing the petitioner in person.

8. Accordingly, this Writ Petition is allowed and the impugned order as well as recovery notice are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after giving due opportunity of personal hearing to the petitioner. Since the Assessing Officer has passed the assessment based on the reasons stated in the impugned order of assessment, the petitioner is directed to give one more explanation to the reasons stated in the impugned order along with supportive documents within a period of two weeks

from the date of receipt of a copy of this order. On receipt of such reply, the Assessing Officer shall indicate the date of personal hearing and on completion of such personal hearing, fresh orders of assessment shall be passed on merits and in accordance with law within a period of six weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner (ST)
Earlier The Assistant Commissioner (CT)
Korattur Assessment Circle,
52/98, Yadaval Street, Padi, Chennai - 600 050.

+1cc to Mr.P.Rajkumar, Advocate sr.no.87774
+1cc to Special Government Pleader(Tax) sr.no.88001

W.P.No.32222 of 2018

cnr(co)
nr 25/01/2019