IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.34239 of 2018
and
W.M.P.No.39783 of 2018

Tvl.The PCK Buderus (India) Special Steels P.Ltd.,
rep. by its Director P.L.Krishnan
No.13, South West Boag Road,
T.Nagar, Chennai - 17. .. Petitioner

Vs

The Assistant Commissioner (CT),
Nandanam Assessment Circle,
No.46, Greenways Road,
Chennai - 28. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the respondent in CST/638916/2001-02 dated 14.12.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to law.

For Petitioner : Mr.D.Vijayakumar
For Respondent : Mr.M.Hariharan
Additional Government Pleader (T)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal.

2. This Writ Petition is filed challenging the demand dated 14.12.2018 directing the petitioner to pay arrears of sales tax under CST for the assessment year 2001-02, a sum of Rs.1,57,898/-; for the assessment year 2007-08, a sum of Rs.14,22,481/-; for the assessment year 2010-11, a sum of Rs.10,60,019/-.

3. The grievance of the petitioner before this Court is that the impugned demand in respect of the assessment year 2007-08

and 2010-11 cannot be sustained since the very order of assessment made in respect of those assessment years were set aside by this Court in W.P.No.12986/2015 and W.P.No.2202 of 2017 respectively. Insofar as the assessment year 2001-02 is concerned, according to the petitioner, there is no arrears of sales tax payable and therefore, the impugned demand is not correct.

4. Learned Additional Government Pleader appearing for the respondent fairly submitted that insofar as the assessment years 2007-08 and 2010-11 are concerned, it is true that the assessment orders were set aside and therefore, the impugned demand made in respect of those two years are factually erroneous. However, insofar as the assessment year 2001-02 is concerned, the learned Additional Government Pleader submitted that the representation made by the petitioner dated 17.12.2018 will be considered and appropriate orders will be passed by the respondent.

5. It is seen that the impugned demand is made in respect of three assessment years namely 2001-02, 2007-08 and 2010-11. It is also seen that in respect of the assessment year 2007-08, already an order of assessment was put to challenge before this Court in W.P.No.12986/2015 wherein the order came to be passed on 02.06.2015, wherein and whereby, the assessment order was set aside and the matter was remitted back to the Assessing Officer for fresh consideration.

6. Learned Additional Government Pleader submitted that after the said order of remand, no fresh order of assessment is passed so far in respect of the assessment year 2007-08. Therefore, it is evident that the impugned demand made in respect of the assessment year 2007-08 cannot be sustained in the absence of any fresh assessment order. Likewise, in respect of the assessment year 2010-11, the petitioner filed W.P.No.2202/2017 and this Court, by order, dated 31.01.2017 disposed of the said writ petition as follows:

> "6.Accordingly, the writ petition is disposed of, with a direction to the respondent to ascertain as to whether adjustment of Rs.5,26,746/- is called for against the tax demand via, the impugned order dated 08.12.2016. For this purpose, the respondent will afford a personal hearing to the petitioner. The respondent will, thereafter, pass a speaking order, a copy of which, will be handed over to the petitioner. The needful will be done by the respondent, with due expedition, though, not later than six weeks from today. Pending decision on the

> petitioner's representation, there shall be stay on recovery of tax, as reflected in the impugned order, to the extent of the adjustment sought for by the petitioner, that is, a sum of Rs.5,26,746/-.
>
> 7. The Writ Petition is disposed of, in terms of the aforesaid directions. Consequently, the connected pending application is also closed. However, there shall be no order as to costs."

7. Learned Additional Government Pleader submitted that in pursuant to the direction issued by this Court as stated supra in W.P.No.2202/2017, no fresh order is passed so far.

8. Therefore, under the above circumstances, the impugned demand made in respect of the assessment year 2010-11 also cannot be sustained in the absence of any fresh assessment order. Therefore, it leaves the issue to be decided herein is only in respect of the assessment year 2001-02. As it is seen that the petitioner has already submitted the representation dated 17.12.2018 before the respondent, the said representation shall be considered and appropriate order shall be passed by the respondent within a period of four weeks from the date of receipt of a copy of this order. Till an order is passed, no coercive steps shall be taken by the respondent against the petitioner. Accordingly the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi

To

The Assistant Commissioner (CT),
Nandanam Assessment Circle,
No.46, Greenways Road,Chennai - 28.

+1 cc to Mr.D.Vijayakumar, Advocate Sr.No.89287
+1 cc to The Government Pleader, Sr.No.89952

W.P.No.34239 of 2018

GP(CO)
CSL/22.01.2019