BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2439 of 2018
and
W.M.P.(MD) No.2634 of 2018

M/s.Murugan Export Corporation,
rep. by its Partner
E.M.Somasundaram,
D.No.41/23, Banathurai North Street,
Kumbakonam. ... Petitioner

Vs.

The Assistant Commissioner (CT)
Kumbakonam – 1 Assessment Circle,
Kumbakonam. ... Respondent

Prayer: Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorafied Mandamus, calling for the records in TIN 33233940466/2013-14 dated 23.10.2017 and quash the same as illegal, arbitrary and against the proviso to section 12(1)(c) of the TNVAT Act and direct the respondent to pass assessment order afresh after perusing entire records pertaining to the year 2013-14 including opportunity of being heard within the time as stipulated by this Court.

For petitioner : Mr.S.Karunakar
For Respondents : Mrs.S.Srimathy, Spl. G.P.

ORDER

The petitioner is an assessee registered with the respondent. The petitioner is a dealer and exporter of Brass Art Wares Handicrafts. He buys the same locally and exports the same outside. In the case of purchase from registered dealers, the dealer has to pay purchase tax under Section 12 of the Act and thereafter claim refund subject to fulfillment of the requisite conditions of export. The petitioner also would purchase from unregistered dealers and in those cases, the petitioner will have to furnish what is known as “Bought note”.

2.In the present case, the petitioner has purchased both from the registered and unregistered sellers. In respect of the assessment year 2013-14, action was taken under Section 27 of the Act, to reopen the same. On receipt of pre revision notice, the petitioner submitted a reply dated 16.08.2017. In the reply it was mentioned that in all their bought notes, it is clearly noted that "BRASS PURCHASE BILL FOR EXPORT". A sample bought note was also enclosed. What the petitioner actually wanted to convey was what was enclosed was only a sample bought note and that they are having bought notes for their entire turn over. The authority had proceeded on the premise that the enclosed bought note was the only note available with them. For the balance amount demand was raised and final orders were passed to that effect. This is assailed in this writ petition.

3.This Court is of the view that the petitioner's reply could have been little more specific and clearer. But, the fact remains that the petitioner is in possession of a number of bought notes which tally with the turn over and what was enclosed was only a sample note. If the authority had given an opportunity of personal hearing, the entire fact would have come to light. Because the authority proceeded to pass the impugned order based on the reply and the notice earlier issued, this Court is of the view that one more opportunity can be given to the petitioner. The order impugned in this writ petition is therefore quashed. The respondent shall fix the hearing date for the personal hearing of the petitioner and the petitioner will be given only one opportunity on the said hearing date. It is for the petitioner to place all the materials in his favour for the consideration of the respondent. The respondent is directed to pass orders on merits and in accordance with law.

4.This writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The Assistant Commissioner (CT)
Kumbakonam – 1 Assessment Circle,
Kumbakonam.

+1CC to Mr.S.Karunakar, Advocate, SR.No. 48734
+1CC to the Special Government Pleader SR.No.49339

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