BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.08.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD)Nos.906 to 909 of 2013

and

M.P(MD)Nos.1, 1, 1, 1, 2, 2 and 2 of 2013

and

W.P(MD)Nos.12889 to 12892 of 2013

and

M.P(MD)Nos.1, 1, 1 and 1 of 2013

W.A(MD)Nos.906 to 909 of 2013:

M/s.High Energy Batteries (India) Ltd.,
Rep. by its Managing Director,
S.Sreedharan

... Appellant in all Writ Appeals/Petitioner

Vs.

The Assistant Commissioner(CT),
Palakkarai I Circle,
Trichy Town. ... Respondent in all Writ Appeals/Respondent

Common Prayer : Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 02.08.2013 passed in M.P(MD)Nos.1, 1, 1 and 1 of 2013 in W.P(MD)Nos.12889, 12890, 12891 and 12892 of 2013.

W.P(MD)Nos.12889 to 12892 of 2013

M/s.High Energy Batteries (India) Ltd.,
Rep. by its Managing Director,
S.Sreedharan

... Petitioner in all WPs

Vs.

The Assistant Commissioner(CT),
Palakkarai I Circle,
Trichy Town. ... Respondent in all WPs

Common Prayer : Writ Petitions filed under Clause 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent herein in TIN No.33893520217/2009-10, 2010-11, 2007-08, 2008-09 and quash the order dated 04.07.2013 passed therein insofar as the demand of tax and interest is concerned.

(In all Writ Appeals/Writ Petitions)
For Appellant/Petitioner : Mr.B.Raveendran for Mr.S.Raja Jeya Chandra Paul
For Respondent/Respondent : Mrs.J.Padmavathi Devi, Special Government Pleader

COMMON JUDGMENT

[Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.]

The Writ Petitions in W.P(MD)Nos.12889 to 12892 of 2013 have been filed by the appellant/writ petitioner seeking for issuance of a Writ of Certiorari, to call for the records of the respondent herein in TIN No.33893520217/2009-10, 2010-11, 2007-08, 2008-09 and quash the order dated 04.07.2013 passed therein insofar as the demand of tax and interest is concerned.

2. The learned single Judge vide order dated 02.08.2013 passed in M.P(MD)Nos.1, 1, 1 and 1 of 2013 in W.P (MD)Nos.12889, 12890, 12891 and 12892 of 2013, granted an order of interim stay on condition that the appellant shall deposit a sum of Rs.30,00,000/-(Rupees Thirty Lakhs Only) before the respondent, within a period of four weeks from the date of receipt of a copy of the order.

3. Aggrieved by the said order, the above writ appeals were filed.

4. It is the case of the appellant/writ petitioner that he is a manufacturer of batteries and a pioneer manufacturer of batteries for the Ministry of Defence. The main activity of the appellant is to do research and design high utility batteries that can be used in all types of weathers. As the appellant is a registered dealer on the file of the respondent, the provisions of the Tamil Nadu Value Added Tax Act, 2006(in short 'TNVAT Act') and Central Sales Tax Act, 1956 (in short 'CST Act'), are applicable to him.

5. It is stated that on 21.04.2011 certain defects were pointed out by the Enforcement Wing Officers during inspection. It was also stated that as the appellant had made inter-state sales to the Ministry of Defence, he was not entitled to avail Input Tax Credit (in short 'ITC') as per Section 19(5)(c) of TNVAT Act. As the appellant was not entitled to avail ITC on capital goods, the respondent issued notices for revision of assessment proposing to revise the ITC availed by the appellant.

6. The respondent had repeated the allegations of the Enforcement Wing Officers and issued revision notices alleging that the appellant had reported the sales turnover and thereby indulged in sales suppression. The appellant had raised several objections in computation of the demand. Admittedly, the said objections were in writing and submitted before the authorities.

7. It is the contention of the appellant that the objections filed by the appellant and also the audited financial statements have not been properly understood by the respondent. It is the main and only grievance of the appellant that in the event of any doubt, the respondent ought to have given a personal hearing to the appellant, to clarify and explain each and every entry. According to the appellant, without doing so, the respondent had passed the impugned order merely on assumptions. As the appellant was denied an opportunity of being heard personally, the writ petitions were filed.

8. In the Writ Petitions, at the time of granting interim order, a condition was imposed on the writ petitioner/appellant to deposit a sum of Rs.30,00,000/-(Rupees Thirty Lakhs Only) before the respondent, within a period of four weeks from the date of receipt of a copy of the order.

9. Aggrieved by the said interim order, the above writ appeals were preferred and in the writ appeals, the condition imposed on the appellant was modified directing the appellant to deposit a sum of Rs.15,00,000/-(Rupees Fifteen Lakhs Only), before the respondent. It is also stated that the said order was complied with.

10. As stated earlier, the only grievance expressed by the appellant is that the respondent ought to have afforded the appellant a personal hearing to explain the entries in the annual report to understand the same and ought not to have passed an order on assumption without getting the doubts clarified.

11. The learned counsel for the appellant also referred to the proviso to Section 27(2) of the TANVAT Act, which provides that no order shall be passed under sub-sections 1 and 2 without giving the dealer a reasonable opportunity to show-cause against such order.

12. The learned counsel for the appellant relied on a decision of a Division Bench of this Court in the case of SRC Projects Private Limited v. Commissioner of Commercial Taxes, Chennai and Another reported in [2010] 33 VST 333 Mad, where it has been held that in a case where the question involved was one of determination of certain factual disputes which were a bit complex and not free from controversy, the principles of fairness would encompass personal hearing within the concept of 'reasonable opportunity to show-cause'.

13. Therefore, the learned counsel for the appellant submitted that the order passed by the respondent without giving the appellant an opportunity of personal hearing is vitiated.

14. As there is violation of principles of natural justice and the only request of the learned counsel for the appellant is to remit the matter back to the respondent for re-consideration after

affording him a personal hearing, we are of the view that the impugned order passed by the respondent dated 04.07.2013 may be set aside and the matter may be remitted back to the respondent for re-consideration.

15. Accordingly, the Writ Petitions are allowed and the impugned order passed by the respondent dated 04.07.2013, are set aside and the matter is remitted back to the respondent for fresh/re-consideration by the respondent after affording an opportunity of hearing to the writ petitioner/appellant to explain the entries in the annual report with the help of his Auditor. The respondent is directed to complete such exercise and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this judgment. No Costs. Consequently, connected Miscellaneous Petitions are closed.

16. In view of the above, the Writ Appeals are disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

The Assistant Commissioner(CT),
Palakkarai I Circle,
Trichy Town.

+1CC to Mr.S.Raja Jeya Chandra Paul, Advocate, SR.No. 79943
+1CC to the Special Government Pleader SR.No. 79827

W.A.(MD)Nos.906 to 909 of 2013
and
W.P(MD)Nos.12889 to 12892 of 2013
23.08.2018

PM
ES/SV/SAR 1/10.09.2018/4P/4C