IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP. No.1078 of 2019
and
WMP. No.1210 of 2019

M/s.Velan Kraft House Private Limited,
Rep. By its Director,
No.2C, Shastri Nagar 1st Main Road,
Adyar, Chennai - 600 020. ...Petitioner

Vs

Assistant Commissioner (ST),
Adyar Assessment Circles,
Chennai - 600 028. ... Respondent

....

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in CST No.33020962369/2014-15 dated 07.12.2018 and to quash the order passed therein and to direct the respondent to pass fresh orders as per law under Section 12 of TNVAT Act after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Ms.G.Dhana Madhri,
Government Advocate (T)

O R D E R

Heard, Mr.C.Baktha Siromoni, learned counsel for the petitioner and Ms.Dhana Madri, learned Government Advocate Taxes for the respondent.

2. A Counter has been filed by the respondent. Detailed submissions have also been heard and by consent expressed by both learned counsel, this Writ Petition is disposed of finally at the stage of admission.

3. The petitioner prays for a Certiorarified Mandamus quashing order dated 07.12.2018 passed by the respondent for the period 2014-15 in terms of the provisions of Tamil Nadu Value Added Tax Act (in short 'Act').

4. The admitted facts are that the petitioner is a registered dealer under the Act and an assessee on the file of the Assistant Commissioner (ST), Chennai. The petitioner has also registered the business under the provisions of the Central Sales Tax Act. The petitioner deals in waste paper purchased from unregistered dealers. For the period 2014-15, notices were received on 12.05.2017 and 26.09.2017 from the respondent proposing to levy tax on the purchases of waste paper from unregistered dealers.

5. A detailed reply had been filed by the petitioner on 17.01.2018 setting forth its responses to the proposals.

6. It is the petitioners' case that the impugned order has been passed in utter hasty even without consideration of all its objections. In the notice the Assessing Authority proceeds on the basis that purchases from un-registered dealers attract liability of 5% tax in terms of Section 12 of the Act. He thus calls upon the petitioner to remit a sum of Rs.2,96,73,714/-, being 5% of its turnover of Rs.59,34,74,284/-. He also states that there were differences of sales turnover between Form 'WW' filed by it and the Profit and Loss account, of a sum of Rs.37,13,268/-. However, in its reply the petitioner has clearly stated that it is not a manufacturer and only a trader. Thus the provisions of Section 12 of the Act are inapplicable to it. A reconciliation of the alleged differences in turnover has also been provided that has not been taken into consideration at all.

7.The assessing officer while proceeding on the basis that the purchases have been effected from unregistered dealers, concludes that since the goods have not suffered any tax, the input tax credit relating to the above should be reversed on a 'deemed basis', working out the resultant liability at 3%, amounting to Rs.1,76,93,632/-.

8.The Counter filed reiterates the contents of the assessment order.

9. The conclusion of the assessing officer are bereft of any reasoning whatsoever. It is unclear as to upon what basis the reversal on notional basis has been made. As far as the applicability of purchase tax is concerned the submissions have been rejected merely stating that the details for the purchases have not been furnished whereas, the notices sent by the Assessing Officer have not called for such details.

10.In these circumstances, I am of the view, that the order of assessment has been completed without proper application of mind.

11. The assessment is set aside and the Officer is directed to re-do the assessment de novo after issuing a show cause notice setting out the proposals. An opportunity of personal hearing is to be afforded to the assessee and orders passed in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of the order.

12. The Writ Petition is allowed. Connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

rkp

To:

Assistant Commissioner (ST),
Adyar Assessment Circles,
Chennai - 600 028.

+1 cc to M/s.Baktha Siromani, Advocate, S.R.No.28760

+1 cc to the Spl. Government Pleader(taxes), S.R.No.28970

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SAI(CO)
SSM(21/05/2019).