IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4013 of 2012
and M.P.No.1 of 2012

Sri Madurai Meenakshi Amman Steel
Re-Rolling Mill India Private Limited,
Rep. by its Director
C.Somasundaram,
213/2, Appanaickenpatti, Sulur,
Coimbatore, Palladam Taluk. ...Petitioner

Vs

The Commercial Tax Officer,
Palladam. ...Respondent

PRAYER: 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 herein in his CST 753359/2007-08 dated 30.12.2011 and to quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.V.Haribabu,
Additional Government Pleader

O R D E R

By stating that the petitioner was an unregistered dealer during the period 01.01.2007 to 06.08.2007, during which the Department had claimed that they had not obtained a Registration Certificate under the Tamil Nadu Value Added Tax Act, 2006, Section 10A of the Central Sales Tax Act, 1956 was invoked and a penalty was imposed on the petitioner.

2. Section 10A of the Central Sales Act empowers the authorities to impose penalty on any person, who purchases goods and is found guilty of an offence under Section 10(b) or (c) or (d) of the CST Act.

3. Apparently, the penalty imposed in the present impugned order falls under Section 10(aa) of the CST Act, which states that if any person fails to get registered under Section 7 of the CST Act, he is liable for the penalty, which is not one of circumstances contemplated for invoking Section 10A. As such, the very basis for invoking Section 10A of the CST Act, is not based on any provision of law, empowering the authorities to do so.

4. It is further seen that under Section 88(2) of the TNVAT Act, 2006, if a dealer is registered under the Tamil Nadu General Sales Tax Act or the Tamil Nadu Additional Sales Tax Act or on the date when the TNVAT came into force, he is deemed to be a registered dealer under the TNVAT Act also till such time a fresh certificate of registration is issued to him under the TNVAT Act.

5. It is not in dispute that the petitioner herein was a registered dealer under the TNGST Act as well as the TNAST Act. Hence, in view of the deemed provision under Section 88 of the TNVAT Act, the petitioner ought to have been considered as a registered dealer under TNVAT Act and on this ground also, the respondent may not be justified in treating the petitioner as an unregistered dealer for the period specified in the impugned order. It would not be out of place to mention here that there is no time limit prescribed for making a fresh application for registration under the provisions of the TNVAT Act or the relevant rules and therefore, the very fact that the petitioner possessed a Registration Certificate under the TNGST Act as well as the TNAST Act, will entitle him to be construed as to have been properly and duly registered under the TNVAT Act also.

6. In view of the fact that the respondent herein does not have the authority or jurisdiction to proceed against the petitioner for the purpose of imposing penalty on the ground that they were unregistered dealers under the provisions of the TNVAT Act, the impugned order is liable to be set aside.

7. Accordingly, the Writ Petition stands allowed and the impugned order of the respondent herein in CST 753359/2007-08 dated 30.12.2011, is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer, Palladam.

+1 cc to M/s.N.Inbarajan,Advocate Sr.No.66520
+1 cc to The Special Government Pleader (Taxes), Sr.No.67246

AKM/16.09.19/2P-4C /

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