IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6147 of 2013
& WMP.No.2146 of 2019

M/s. Arun Smelters Ltd,
Rep. by its Director Umesh Madan,
No.54, First Lane, Pantheon Road,
Egmore,Chennai-8.
.. Petitioner

Vs.

The Assistant Commissioner (CT)
Valluvarkottam Assessment Circle,
No.621, Anna Salai,
Chennai - 600 005. .. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records relating to the impugned order in TNGST/1501028/2000-01 dated 11.02.2013 passed by the respondent and quash the same as illegal without authority of law and violative of principles of natural justice.

For Petitioner : Mr.K.Jayachandran

For Respondent : Mr.Mohammed Shaffiq

O R D E R

This writ petition is directed against the order in TNGST/1501028/2000-01 dated 11.02.2013 passed by the Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai.

2. The petitioner is a manufacturer of iron and steel products and a registered dealer. The dispute relate to the assessment year TNGST 2000-01. The petitioner reported a total and taxable turnover of Rs.59,49,20,941/- and tax of Rs.15,92,06,913/- the petitioner claimed exemption on the turnover of Rs.42,60,88,808/- representing second sales of iron and steel products. The assessment was accepted on the ground that there is no tax payable. On the basis of search in the premises of the petitioner a pre-revision notice dated 30.09.2002 was sent. On the basis of the notice during the

search, it was found that he had effected purchases from the dealers namely, i) M/s.Aashana Enterprises, ii) M/s.Kamlesh Enterprises and iii) M/s. Shreyanesh Ispat Chennai P.Ltd.

3. Even though it is stated that purchases have been effected, there is no movement of goods. It is stated that statements were taken from the employees of the above said three dealers, from whom the petitioner have purchased the products. Accordingly, additions are made to the taxable turnover. A pre-revision notice was sent to the petitioner. On receipt of the pre-revision notice, the petitioner denied the allegations and sought for a registration of the said dealers and assessment details of the dealers. Copies of the statements were recorded from the dealers who sold goods in question and also the traders whom are said to be having business adjacent placed to the place of business of the petitioner. Request was made to cross examine the persons who have given statements by the petitioner.

4. Since the request of the petitioner was not accepted, the petitioner filed WP.No.33108 of 2004. This Court by an order dated 18.11.2004, recorded the submissions of the petitioner and directed that the petitioner should be furnished with D7 records. This Court also directed the respondent to afford opportunity to the petitioners to cross examine the parties. Para 3 of the order reads as under:-

> " It is submitted by the learned senior counsel Mr.K.V.Venatapathy that the impugned orders have been passed without affording opportunity to the petitioners. He further submitted that the petitioners have sought for D7 records but the same were not furnished and no opportunity was also afforded to the petitioners to cross-examine third parties, which are not disputed by other side. On that ground, the impugned orders are set aside. These cases are remanded back to the respondents for fresh consideration. The respondents are directed to furnish D7 records at the cost of the petitioners to cross-examine the third parties and pass orders on the same within a period of eight weeks from the date of receipt of a copy of this order."

5. It is stated that the petitioner appeared before he authority on 27.12.2012 and was ready to cross examine the persons to who had given statements. The petitioner states that he appeared for the purpose of cross examining the dealers and no witnesses were produced on the side of the respondent. The petitioner received the impugned order dated 11.02.2013 which confirmed the pre-revision notice. The order dated 11.02.2013 is now challenged in the instant writ petition.

6. Heard the counsel for the parties.

7. The learned counsel for the petitioner reiterated the contentions raised in the writ petition. However, the learned counsel for the respondent would state that notice and summons have been sent to the respresentatives of the three dealers namely i) M/s.Aashana Enterprises, ii) M/s.Kamlesh Enterprises and iii) M/s. Shreyanesh Ispat Chennai P.Ltd., but they did not appear for the purpose of cross examination and therefore they cannot be made responsible for the same. They also stated that genuineness of the transactions should be accepted by the petitioners as the onus lies on them and reverse onus cannot be put on the respondent. It is stated that the respondents have not discharged their onus.

8. The learned counsel for the petitioner has placed reliance on the order dated 21.04.2006 passed by this Court in WP.No.35399 of 2006, wherein, the identical circumstances, the assessment order has been set aside on the ground that sufficient opportunity to cross examination had not been given. Para 6 of the said order reads as under:-

> "Thus, for the above reasons, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall issue summons to the third party dealers and on their appearance before the respondent, permit the respondent to cross examine those dealers after which the petitioner should be granted minimum of fifteen days time to submit their objections and on receipt of the objections, the assessing officer shall re-do the assessment after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed."

9. It would have been accepted the contentions of the respondent, but a look at the impugned order would show that the strong reliance have been placed on the submissions made by the representatives of the three dealers namely i) M/s.Aashana Enterprises, ii) M/s.Kamlesh Enterprises and iii) M/s. Shreyanesh Ispat Chennai P.Ltd., without giving an opportunity to the petitioner to cross examine these persons. The respondent could not have placed any reliance on them. The only issue is as to whether without permitting cross examination, could be assessment proceedings have concluded against the petitioner or not. The impugned order is therefore is not in accordance with the order passed by this Court in WP.No.35399 of 2006 dated 21.04.2006. The explanation of the counsel for the revenue that the dealers did not appear despite summons, cannot be accepted in the light of the specific direction of this Court dated 18.11.2004 in

WP.No.33108 of 2004.

10. In view of the above, the impugned order is set aside. The matter is remanded back to the assessing authority namely O/o. The Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai, once again to consider the case and pass appropriate orders without placing reliance on the statements of the three dealers. It is pertinent to note that the pre-revision notice is primarily placed on the materials recorded during such of the premises of the petitioner and statements recorded by the department from the dealers namely i) M/s.Aashana Enterprises, ii) M/s.Kamlesh Enterprises and iii) M/s. Shreyanesh Ispat Chennai P.Ltd., and also from traders of adjacent places. Since the issue pertains to the year of 2001-02, the assessing authority is directed to complete the assessment proceedings within a period of eight weeks from the date of receipt of a copy of this order. Writ petition is allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Pkn.

To

The Assistant Commissioner (CT)
Valluvarkottam Assessment Circle,
No.621, Anna Salai,
Chennai - 600 005.

+1cc to Mr.K.Jayachandran, Advocate SR.87971/19
+1cc to the Spl Government Pleader, SR.88555/19

W.P.No.6147 of 2013

GP(CO)
CB(29/11/2019)