IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.8593 of 2019
and
W.M.P.No.9113 of 2019

Tvl.KJK Polydiamonds International(p) Ltd.,
Rep.by its Managing Director Mr.K.Jayakumar,
No.3-E, No.112, Nungambakkam High Road,
Chennai - 34. ..Petitioner

vs

The Assistant Commissioner(CT),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 31. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in CST No.822345/2006-07 dated 26.02.19 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law or issue such other writ, direction as this Honourable Court think deem and fit proper in the circumstance of the case and render justice.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Mr.D.Vijayakumar, learned counsel on record for writ petitioner and Mr.M.Hariharan, learned Additional Government Pleader on behalf of lone official respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. This writ petition turns on a very narrow compass.

4. Writ petition arises under the 'Central Sales Tax Act, 1956' ['CST Act' for the sake of brevity] and the Rules thereunder being the 'Central Sales Tax Rules, 1957' ['said rules' for the sake of brevity].

5. The relevant assessment year is 2006-2007.

6. The short point is that the writ petitioner, who is a dealer under CST Act and said rules is entitled to concessional rate of tax, if 'C' Forms are produced.

7. The respondent has passed an order dated 26.02.2019, determining a taxable turnover for aforesaid assessment year i.e., 2006-2007 at little over Rs.4,76,75,337/-. What is of importance is, the respondent has held that total and taxable turnover determined for the year 2006-07 was at 12.5% and has held that the tax due is little over Rs.59.59 lakhs. The numerical value with specificity is Rs.59,59,417/- as Tax due and for Tax paid, it is Nil.

8. A perusal of the impugned order shows that a notice was issued prior to the impugned order, calling upon the writ petitioner to give objections. But the writ petitioner did not file objections or file declaration forms i.e., C Forms.

9. This is articulated in the penultimate paragraph of the impugned order and the same reads as follows:

> 'A notice was issued to the dealers calling for objections if any to the above proposal and duly served on them on 14.08.2018. Even after sufficient time was given they have neither filed their objection our filed the declaration forms till dated. Therefore the proposal is confirmed and order issued.'

10. Adverting to the aforesaid penultimate paragraph in the impugned order, learned counsel for writ petitioner submitted that it is incorrect to say that the writ petitioner has not responded to the notice.

11. Adverting to the typed set of papers, which forms part of the case file before this Court, learned counsel submitted that Pre-Assessment notice dated 23.06.2014 bearing CST/697145/2006-07 was issued, calling upon the writ petitioner to send objections if any against the proposed assessment. To this, the writ petitioner responded on 03.11.2015. A perusal of the writ petitioner's response / reply dated 03.11.2015 shows that the same has been duly received by the respondent namely Commercial Tax officer, Nungambakkam Assessment Circle, Chennai - 600 031.

12. In the reply, writ petitioner has pointed out that owing to heavy rain, there was water logging and there was some difficulty in producing the C Forms immediately. On this basis, some time was sought.

13. Learned counsel for writ petitioner, pointed out that there was deluge and floods in November-December 2015 and this Nature's fury is common in knowledge.

14. Learned counsel submits that, thereafter, almost four years later, on 10.08.2018, the respondent sent one more communication, calling for objections and it is for this communication that the writ petitioner did not reply.

15. On the aforesaid basis, learned counsel for writ petitioner submitted that the basis on which the impugned order has been passed i.e., the premise on which the impugned order is predicated namely, the writ petitioner dealer did not respond to the notice prior to the impugned order is not entirely correct.

16. Learned counsel for Revenue, in response submitted that concessional rate of tax can be extended to the writ petitioner under CST Act and said rules only if the C forms are produced.

17. Considering that there was floods, deluge, disruption of normal life in November-December of 2015, this Court is inclined to pass the following order:

a) Impugned order dated 26.02.19 bearing CST No.822345/2006-07 is set aside solely to facilitate and give an opportunity to the writ petitioner to produce the C Forms. This is more so, as the writ petitioner submits that the C Forms are now available and the same can be produced. In other words, no opinion or view is expressed by this Court on the merits of the matter.

b) Writ petitioner's counsel, on instructions, requested for a personal hearing.

c) Personal hearing is fixed on 15.07.2019 (Monday) at Half Past 11 (11.30 a.m) in the office of the sole respondent. Writ petitioner undertakes to go before the respondent, produce the requisite C Forms and all supporting documents on the said day, without seeking any adjournment or rescheduling of the personal hearing.

d) If the writ petitioner does not avail aforementioned opportunity of personal hearing on 15.07.2019, the impugned order will stand revived. If the writ petitioner avails the opportunity of personal hearing and produces C Forms and other supporting documents, the respondent shall pass suitable orders after taking into account the C Forms, supporting materials and other objections of the writ petitioner within a period of eight weeks from the date of the personal hearing i.e., on or before 09.09.2019. Orders so passed by the respondent shall be communicated to the writ petitioner under due acknowledgment within seven(7) working days from the date of order.

18. Writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

kak

To

The Assistant Commissioner(CT),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 31.

+1cc to Mr.D.Vijayakumar, Advocate SR.No.50688

+1cc to Government Pleader SR.No.51240

W.P.No.8593 of 2019

CP(CO)
GMY(22/07/2019)