IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.22865 & 22866 of 2018
& WMP.Nos.26734 & 26733 of 2018

Selva's Steel Private Limited
Represented by its Managing Director
A.Selvam ...Petitioner in both Petitions

--Vs--

The Assistant Commissioner (ST),
Tondiarpet Assessment Circle
19 & 20, Kummalamman Koil Street,
Chennai-81 ...Respondent in both Petitions

Prayer: Writ Petitions 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 Certiorari, to call for the records of the respondent in TIN 33161201397/2006-07 & CST 91476/2006-07 both dated dated 23.07.2018 and quash the same.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Heard Mr.R.Kumar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondent.

2. Two orders of assessment both dated 23.07.2018, in terms of the provisions of the Central Sales Tax Act, 1956 ('CST Act') and Tamil Nadu Value Added Tax, 2006 ('TNVAT Act') and both for the period 2006-07, have been assailed in the present writ petitions.

3. The Original assessment in terms of the CST Act was completed on 18.03.2009, and revised on 17.10.2018. On 27.03.2018 the respondent issued a notice for revision of assessment on the ground that the second proviso to Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957

('Rules'), required the petitioner to file a single C Declaration Form that covered all transactions of sales that had taken place in one quarter of a financial year. He thus proposed to reject the concessional rate sought for by the petitioner and bring the transactions to tax at the rate of 4% since, according to him, the C Declaration Forms were defective as they split over and covered subsequent months as well.

4. This very issue has been considered by the Principle Secretary/ Commissioner of Commercial Taxes in Circular No.44 of 2015 dated 20.10.2015. The Commissioner notes that the proviso to Rule 12 of the Rules have resulted in practical and un-intended consequences. He thus mitigates the rigour of the Rule stating that Declaration forms filed in respect of delivery of goods spread over different quarters/calendar months of a financial year may be accepted as valid, based on the date of sales invoice or date of dispatch or date of receipt/delivery of the goods in other States or a combination of all the aforesaid possibilities. The Circular is extracted in full below:

Circular No.44/2015
D3/2573/2015

Office of the Principal Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chennai-5

Dated 20.10.2015
Circular

Sub: CST Act, 1956-Declaration Forms in respect of delivery of goods being spread over to different quarter/calendar months in a financial year or of different financial years can be accepted and need not be disallowed-Reg.

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1.Certain representations have been received in respect of declaration forms furnished by dealers towards inter-state sales/consignment sales etc. being rejected by the assessing officers on the ground that the date of sale invoice doesn't agree with those mentioned in the declaration forms. It is pertinent to note here that the other state dealers-buyers consignees might have issued declaration forms for all the goods received by them in a quarter/calendar month irrespective of the fact of dispatch date of such goods and in such situations, declarations form issued may contain deliveries made in that quarter/calendar month and also previous quarter/calendar month in a financial year or a different financial years.

2. In this regard, it is pertinent to reproduce the two provisos to Rule 12(1) of CST (Registration & Turnover) Rules, 1957.

"Provided that a single declaration may cover all transaction of sale which take place in a quarter of financial year between the same two dealers."

"Provided also that where, in the case of any transaction sale the delivery of goods is spread over to different quarters in a financial year or a different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each quarter of a financial year.

3. As per the provisos, it is necessary to furnish the declaration forms in respect of goods delivered in each quarter of a financial year. In reality as a trade practice, it may happen that goods dispatched on last days of a quarter/calendar month are received in the first part of next quarter/calendar month and the other state dealer-buyer/consignee may mention the date of receipt/delivery of goods in the declaration form as against date of sales invoice or date of dispatch of goods, which need not be rejected outright by the assessing officers.

4.Declaration forms are meant to ensure that the goods are dispatched to registered dealers in other state and the same is properly accounted for by the dealers in other states. If this principal objective satisfied the purpose for which declaration forms are intended need not be negatived on such insignificant grounds. Accordingly, to resolve the practical difficulties being faced by dealers owing to prevailing trade practices it is clarified that such declaration forms in respect of delivery of goods being spread over to different quarter/calendar months of financial year or of different financial years can be accepted as valid declarations based or the date of sales invoice or date of dispatch or date of receipt/delivery of goods in other state or combination of all the three possibilities.

5. This Circular has been brought to the notice of the officer in the revision proceedings but has been brushed aside by the Assessing Authority citing no valid or specific reason for deviation therefor.

6. In the light of the Circular as above, the impugned revision has no legs to stand, particularly, since the veracity of the C Declaration Forms in relation to the transactions have not been questioned otherwise. What is objected to is only the non-filing of the Forms within the stipulated quarter which, in my considered view, is a hyper-technical objection that has rightly been set at naught by the Commissioner.

7. Additionally, in the VAT order, no show cause notice/pre-assessment proposal has been issued and the reversal of input tax credit has been effected in gross violation of the principles of natural justice.

8. In the light of the discussion and my conclusions as above, the impugned orders are set aside and both WPs are allowed. Consequently, connected miscellaneous petitions are closed with no orders as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

ska

To

The Assistant Commissioner (ST),
Tondiarpet Assessment Circle
19 & 20, Kummalamman Koil Street,
Chennai-81

+2 CCS to Mr.R.Kumar, Advocate sr 104776, 104777
+1 CC to The Special Government Pleader sr 105019.

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NRL(CO)
SP(12/03/2020)