IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18957 of 2019
&
W.M.P.No.18309 of 2019

Bharat Heavy Electricals Limited
Represented by its Deputy General Manager/
Finance
Mr.N.Ramesh
Indira Gandhi Industrial Complex
Ranipet .. Petitioner

Vs.

1) The Asst. Commissioner (ST)
Ranipet (SIPCOT)
Ranipet

2.The Appellate Deputy Commissioner (ST)
Vellore .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the files of the First Respondent herein in CST 1141686/2015-16 dated 26.04.2019 and to quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondents: Ms.G.Dhanamadhri
Government Advocate

ORDER

Mr.N.Inbarajan, learned counsel on record for writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate accepts notice on behalf of both the respondents.

2.Main writ petition itself is taken up with the consent of both the learned counsel.

3.In the light of the trajectory of the hearing today, the entire matter now turns on a very narrow compass. An order passed by the first respondent being an order dated 26.04.2019 bearing reference CST:1141686/2015-2016 is without any disputation or disagreement an order which has been made under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu

Act 32 of 2006' ('TNVAT Act' for brevity) read with Section 9(2) of 'Central Sales Tax Act, 1956' ('CST Act' for brevity). This order shall hereinafter be referred to as 'impugned order' for the sake of brevity and clarity. This impugned order is a revised Assessment Order.

6. Several submissions were made on merits with regard to the proposal, writ petitioner dealer's reply to the revisional notice, invoices etc., inter alia touching upon Section 8-A (1)(b) of CST Act. However, as mentioned supra, in the light of the trajectory of the hearing today, the matter now turns on a narrow compass and therefore it is not necessary to refer to those submissions on merits. From the trajectory of the hearing today, it comes to light that entire matter now turns on proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act. To be noted, as already mentioned supra, impugned order has been made inter alia under Section 27 of TNVAT Act. Aforesaid proviso to sub-sections (1) and (2) to Section 27 of TNVAT Act reads as follows:

> 'Provided that no order shall be passed under sub-section (1) & (2) without giving the dealer a reasonable opportunity to show cause against such order.'
>
> (underlining made by this Court to supply emphasis and highlight)

7. When the objections were considered and when it came to light that there were some discrepancies in the objections, particularly when the credit notes filed were examined and reconciled with the notice issued and statement filed, the writ petitioner dealer was not given an opportunity to explain the same.

8. As many as nine such discrepancies have been adumbrated in 3 points and 6 sub-points. This is articulated in impugned order itself. There is no material before this Court to show that writ petitioner dealer was given an opportunity to explain these discrepancies.

9. Considering the facts and circumstances of this case and considering the discrepancies, which have been alluded to or in other words considering the peculiar nature of the facts of this case, this Court is left with the considered view that it would be appropriate to give a personal hearing to the writ petitioner to explain aforesaid discrepancies.

10. In the light of the above, this Court passes the following order:

> a) Impugned order dated 26.04.2019 bearing reference CST:1141686/2015-2016 is set aside. To be noted, impugned order is set aside solely on the ground of reasonable opportunity within the meaning of proviso to sub-sections (1) and (2) of Section 27 of

TNVAT Act not being given. In other words, this Court does not express any opinion or view on the merits of the matter.

b) By consent of both sides, i.e., learned counsel for writ petitioner and learned Revenue counsel, personal hearing is fixed on 08.08.2019 at 12 Noon. Venue shall be Office of the respondent. Learned counsel for writ petitioner, on instructions, submits that the aforesaid personal hearing opportunity will be availed by the writ petitioner on the aforesaid date, time and venue.

c) If the opportunity is not availed on the aforesaid date, time and venue, impugned order will stand revived without reference to this Court and it will be open to the respondents to carry the same to its logical end. If the aforesaid opportunity of personal hearing is availed wherein it is open to the writ petitioner to press into service supporting documents, books of accounts as may be necessary. The first respondent shall embark upon the exercise of redoing the revised assessment and revised Assessment Order shall be passed as expeditiously as possible and in any event within six weeks form the date of personal hearing i.e., six weeks from 08.08.2019.

This writ petition is disposed of with the above said directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Joint Registrar (J)

//True Copy//

Sub Assistant Registrar

gpa

To

1) The Asst. Commissioner (ST)
Ranipet (SIPCOT), Ranipet

2.The Appellate Deputy Commissioner (ST)
Vellore

+1cc to Mr.N.Inbarajan, Advocate, S.R.No. 57756
+1cc to the Special Government Pleader(Taxes), S.R.No. 58224

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SS(CO)
GN(31/07/2019)