IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No. 2813 of 2018
&
C.M.P.No.23366 of 2018

Tvl.SPX Thermal Equipment and Services
India Pvt. Ltd., Rep by its Director
R.Sunder, Apex Plaza, 3rd Floor,
No.3, Nungambakkam High Road,
Nungambakkam,
Chennai - 34. ... Appellant/Petitioner

-vs-

The Assistant Commissioner (CT),
Vallurvarkottam Assessment Circle,
No.10, Palaniyappa Maligai,
4th Floor, Greams Road,
Chennai - 6. ... Respondent/Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court in W.P.No.11330 of 2018 dated 03.10.2018 filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to call for the records o the files of the respondent proceedings in CST/1219437/2015-16 dated 30.05.2017 and the connected proceedings dated 26.02.2018 and quash the same being illegal invalid without jurisdiction and violated the principles of natural justice and contrary to the principle laid down by this Honourable court.

For appellant : Mr.D.Vijayakumar
For Respondent : Mr.V.Hari Babu,
Additional Government Pleader
assisted by
Mr.M.Hariharan,
Additional Government Pleader

JUDGMENT
(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

The appeal by the writ petitioner is directed against the order in W.P.No.11330 of 2018 dated 03.10.2018.

2. We have heard Mr.D.Vijayakumar, learned counsel for the appellant and Mr.V.Hari Babu, learned Additional Government Pleader assisted by Mr.M.Hariharan, learned Additional Government Pleader for the respondent.

3. This appeal is directed against the order passed in W.P.No.11330 of 2018 dated 03.10.2018. The said writ petition was filed by the appellant challenging the order passed by the respondent/Assessing Officer dated 30.05.2017 which is an assessment order under the provisions of Central Sales Tax Act, 1956 for the assessment year 2015-16. The other order which is impugned in the writ petition is passed under Section 84 of the Tamil Nadu Value Added Tax, 2006 ('TNVAT Act' in short).

4. The learned counsel for the appellant vehemently contended that the learned writ Court ought to have entertained the writ petition and ought not to have relegated the appellant to avail the appellate remedy on account of the glaring errors which have manifested in the order dated 22.02.2018. Earlier, the appellant had approached this Court and filed writ petitions in W.P.Nos. 16414 and 16415 of 2017. Those writ petitions were filed challenging the assessment order under the Central Sales Tax Act, 1956 ('CST Act' in short) dated 30.05.2017 both relating to the assessment year 2015-16. The primary ground on which those assessment orders were put to challenge was by contending that it is contrary to the principles of natural justice and the respondent should be directed to issue separate notice for framing the assessment under the provisions of TNVAT Act and CST Act based on the representations given by the appellant dated 18.04.2017, 03.05.2017 and 04.05.2017.

5. The Court did not accede to the prayer as sought for by the appellant, but by a common order dated 31.07.2017 disposed of the writ petitions with a direction to the appellant to file an application under Section 84 of the TNVAT Act within a time frame, with a further direction to the Assessing Officer to consider the same and pass a speaking order on merits and in accordance with law.

6. In terms of the directions issued, the appellant had filed petition under Section 84 of the TNVAT Act, dated 17.08.2018. The Assessing Officer issued notice dated 02.02.2018 affording an opportunity of personal hearing to the Authorized Representative of the appellant who appeared before the Assessing Officer. Subsequently, the matter was once again heard on 27.02.2018, on which date also the appellant submitted

further representation. The respondent/Assessing Officer has passed an order dated 26.02.2018 challenging the application filed under Section 84 of the Act.

7. The learned counsel for the appellant would contend that the finding recorded by the Assessing Officer by referring to lorry way bill which contains an endorsement “Self”, the appellant's case should not have been rejected and the Form-C declaration submitted by the appellant should have been accepted by the Assessing Officer. The copies of the invoices and the lorry way bill were produced before us. Though, we cannot undertake a fact finding exercise yet to consider as to whether the appellant has made out a case, we perused the documents. It is not in dispute that the invoice contains the names of the three parties namely the consignee i.e., Nabinagar Power Generating Company Pvt. Ltd., Ankorha District, Aurangabad, Bihar, the name of the other party is M/s.Alstom Bharat Forge Power Private Limited which is in Gujarat and the appellant. The invoice has been raised by TEMA India Limited, Palghar District, Maharashtra, who is stated to be manufacturer. On the reverse of the invoices there are certain endorsements. Further in the lorry way bill, there are columns provided to mention the name of the manufacturer/consignor, the consignees bank name and address, in the said column, there is an endorsement “Self”. This according to the Assessing Officer will clearly show that the goods directly moved to Bihar State from Maharashtra and the appellant/assessee can claim no benefit by virtue of said transaction. However, to our mind, it appears that the issue is not as simple as projected by the Assessing Officer, more particularly, in the light of the Tripartite Agreement entered into between the parties dated 25.01.2016 and another agreement stated to have been entered into between the parties.

8. Furthermore, the equipments which were supplied by the petitioners manufactured by TEMA India Limited have been supplied to M/s.Alstom Bharat Forge India Private Limited, who are stated to be contractors who have been nominated for establishment of Nabinagar Power Generating Project. Thus, in our view, a factual exercise is required to be done to examine as to whether the appellant is entitled to produce Form-C declaration and claim concessional rate of tax. In any event, this exercise requires re-appreciation of the documents placed by the dealer, which in our view, cannot be done in a writ petition as rightly pointed out by the learned Single Bench.

9. The learned counsel for the appellant would contend that if a direction is issued to consider the Form-C declaration and the Assessing Officer accepts the same, substantial amount of liability as quantified in the assessment order will be reduced.

In fact, the appellant is willing to file an appeal before the First Appellate Authority with regard to the other issues. Unfortunately, we cannot exercise such a discretion in the matter, since the contention of the appellant regarding his entitlement to avail the benefit of concessional rate of tax by filing Form-C declaration requires to be decided by going into veracity of the documents produced by the appellant. What is required to be examined is as to whether inspite of the triparte agreement between the parties and the names of the parties shown in the invoices, was the Assessing Officer justified in solely relying upon the endorsement "Self" in the column "assessee name and address."

10. In our prima facie view, the totality of the transaction is to be considered and not a single line appearing in the lorry way bill. Therefore, we are of the view that the Appellate Authority should consider the entire matter in an independent manner without solely being guided by the observations made by the Assessing Officer and if the same is not complied with, then it would amount to abdicating the powers of the Appellate Authority.

11. Thus, for the above reasons, while affirming the order passed by the learned Single Bench directing the appellant to go before the Appellate Authority, we direct the Appellate Authority to independently pass an order after all the documents are produced by the appellant and then consider the nature of transaction and if satisfied, extend the benefit of the Form-C declaration which has been filed by the appellant. The appellant is directed to file Statutory appeal within a period of four weeks from the date of receipt of copy of this order, till such time, the respondent shall not initiate any coercive action for recovery of the tax and penalty as quantified in the assessment orders. The appellant is entitled to raise all points before the Appellate Authority including the legal submissions which were canvassed before us.

12. In the result, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrm

To

The Assistant Commissioner (CT),
Vallurvarkottam Assessment Circle,
No.10, Palaniyappa Maligai,
4th Floor, Greams Road, Chennai – 6.

+1 cc to Mr.D.Vijayakumar, Advocate, Sr.No. 32564

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NMI(CO)
CSL/04.06.2019