IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.12.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 11110 of 2015
and
M.P. Nos. 1 and 2 of 2015

M/s. Sukumar Engineering Exports,
Rep. by its Proprietor - S.Sukumar,
No. 168-A, Kangayam Main Road,
Vellingiri Pudur,
Arachalur,
Erode District.
... Petitioner

-vs-

1. The State of Tamil Nadu,
Represented by the Secretary,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009.

2. The Assistant Commissioner (CT),
Erode Rural Assessment Circle,
Erode.
... Respondents

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 file of the Second Respondent in its impugned proceedings made in CST 883084/11-12 dated 06.03.2015, quash the same.

For Petitioner : Mr. S.Rajasekar

For Respondents: Mr. A.N.R.Jayaprathap,
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. S.Rajasekar, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government (Taxes) appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No. CST 883084/11-12 dated 06.03.2015 passed by the Second Respondent, which is evidently a show cause notice calling upon the Petitioner to file his written explanation for the proposal to revise the liability of the Petitioner for the year 2011-2012 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short) for the reason that the concessional rate of tax availed for 'capital goods' was not supported by evidence to show that they had been used 'within State' in terms of Section 2(11) of the TNVAT Act. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Special Director -vs- Mohammed Ghulum Ghouse [(2004) 3 SCC 440], Secretary, Ministry of Defence -vs- Prabhash Chandra Miradha (AIR 2012 SC 2250) and Life Insurance Corporation of India -vs- A.Masilamani [(2013) 6 SCC 530] that a show cause notice cannot be challenged before completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion.

3. It is accepted by Learned Counsel for both sides that the manner in which assessment of tax has to be made for 'capital goods' for the purpose of Section 2(11) of the TNVAT Act has explained by the Division Bench of this Court in M/s. Schwing Stetter (India) Pvt. Ltd., -vs- Commissioner of Commercial Taxes, Chennai (Order dated 05.04.2016 in W.P. No. 37604 of 2007 etc., batch), which has been confirmed by the Hon'ble Supreme Court of India in M/s. Schwing Stetter (India) Pvt. Ltd., -vs- State of Tamil Nadu (Order dated 17.10.2016 in Special Leave to Appeal (C) Nos. 17804 to 17808 of 2016), after the filing of this Writ Petition.

4. Having regard to the aforesaid legal position, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petitions with liberty to the Petitioner to submit his explanation in response to the show cause notice raising all contentions before the Second Respondent so as to deal with the same before coming any ultimate conclusion in the matter.

5. It is incumbent upon the Petitioner to submit his explanation with all supporting documents and comply with the requirements as sought in the impugned order by 31.12.2020. The Respondent shall conduct enquiry affording full opportunity of hearing, duly consider the explanation of the Petitioner taking note of the principles laid down in the aforesaid binding ruling, deal with the each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate decision taken under written acknowledgment. In the

event of any decision entailing adverse civil consequences, the Petitioner is not precluded from working out his remedies for necessary relief before the proper forum in the manner recognized by law. Though obvious, it is made clear that no opinion has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter.

In the result, this Writ Petition is dismissed as withdrawn with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

vjt

To

1. The Secretary to the Government of Tamil Nadu,
   Commercial Taxes and Registration Department,
   Fort St. George,
   Chennai - 600 009.

2. The Assistant Commissioner (CT),
   Erode Rural Assessment Circle,
   Erode.

W.P. No. 11110 of 2015

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