IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.02.2020
CORAM
THE HON'BLE MR. JUSTICE C. SARAVANAN
W.P. No. 13439 of 2013
and
M.P. No. 1 of 2013

The Union of India,
Owning the Integral Coach Factory,
Rep. by its General Manager,
No.20, Constable Road,
Perambur,
Chennai - 600 038.

... Petitioner

-vs-

The Assistant Commissioner (CT),
Perambur II, Assessment Circle,
Perambur, Chenai - 600 011.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned orders dated 22.02.2013, 22.02.2012 and 10.04.2013, passed by the respondent and to quash the same.

For Petitioner : C.V.Ramachandra Murthy
Senior Panel Counsel

For Respondent : Mr. R.Swarnavel
Government Advocate

O R D E R

The petitioner is the Department of the Union of India, under the Ministry of Railways. It is engaged in the manufacture of railway coaches. In the course of manufacture of coaches, the petitioner generates “waste and scrapes” which were sold to various buyers under Tender.

2. The petitioner had obtained registration under the Tamil Nadu General Sales Tax Act, 1959 but had failed to file returns. At the same time, the petitioner has remitted the tax collected from the sale of waste and scrap at 4%. Since the petitioner had failed to file returns, the Assistant

Commissioner, Income Tax Department issued notice dated 01.08.2011, under Section 22(4) of the TNVAT Act, 2006 and proposed a turnover of Rs.21,56,89,100/- applying the best of judgment for the year 2007-2008. Similar notice was also issued for the assessment year 2008-2009.

3. These notices were ultimately culminated in separate assessment order dated 08.05.2012, for the respective assessment orders. The petitioner has not filed any appeal against these orders and therefore the respondent have initiated recovery proceedings vide impugned notices dated 22.02.2013 and 10.04.2013.

3. It is the contention of the learned counsel for the petitioner that the petitioner was not required to file returns under the provision of TNVAT Act, 2006 as it is a Central Government Department. In this connection a reference was made to clarification issued to the Heavy Vehicles Factory, Avadi, Chennai-54 on 27.06.2007 TIN Number where the following queries were answered as under:

Sl. No.	Queries	Reply
1	Whether TIN Number is mandatory for Central Government Department	TIN Number is not mandatory for Central Government Department. They are deemed dealers as per Explanation II to Section 2(15) to TN VAT Act, 2006. They should raise sale invoice/tax invoices, collect tax at the appropriate rate and pay the same to the State Government. Unless they exhibit the tax element separately, the purchase cannot claim Input Tax Credit.
2	Is it mandatory for our suppliers to have our TIN Number and they cannot supply the items in the absence of the same.	No TIN Number is necessary (or) Mandatory for them. A letter from the Department is sufficient to the buyers/sellers.

4. The petitioner also approached the Commissioner of Commercial Tax Office with similar request and by a communication dated 20.07.2007, the clarification was issued to the petitioner Railway and same was made applicable to the petitioner. The petitioner was under a bonafide belief that it was not required to file returns and therefore did not file

returns. However, the petitioner has paid the tax on the amount collected from various scrap dealers. Since no appeals have been filed against the assessment orders dated 08.05.2012, the impugned recovery proceedings have been initiated. The valuation adopted by the petitioner has been countermanded. I am therefore inclined to remit the case back to the respondent to pass a fresh order for the two assessment years. Both the orders dated 08.05.2012, which stand quashed shall be treated as show cause notice.

5. The petitioner may file its objections within a period of 30 days from the date of receipt of a copy of this order. The respondent shall pass thereafter appropriate order on merits within in a period of three months from the date of receipt of a this order. The impugned recovery proceedings shall be kept in abeyance and further recovery proceedings shall be in subject to the orders to be passed by the respondent pursuant to this order.

6. With the above observation, the writ petition stands disposed of accordingly. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

ssi

To

The Assistant Commissioner (CT),
Perambur II, Assessment Circle,
Perambur, Chenai - 600 011.

+1 cc to Special government Pleader(Taxes) sr12891
+1 cc to Mr.C.V.Ramachandramurthi Advocate sr11702

W.P. No. 13439 of 2013

aa19/03/2020