IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 16291 of 2012
and
M.P. No. 1 of 2012

Tvl. Modern Granites,
Represented by its Managing Partner,
D.Mahalingam,
Kothampadi Post,
Attur - 636 102,
Salem District. ... Petitioner

-vs-

The Commercial Tax Officer,
Attur (Rural) Assessment Circle,
Attur. ... 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 files of the Respondent in CST. No. 678717/07-08 dated 31.01.2012 received on 13.06.2012 and quash the same in so far as the issue related to declaration in Form H is concerned as being contrary to the principle of natural justice and that of Rule 12(7) and Rule 12(10)(a) of the Central Sales Tax (Registration and turnover) Rules, 1957.

For Petitioner : Mr. R.Senniappan

For Respondents: Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. R.Senniappan, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order in CST. No. 678717/07-08 dated 31.01.2012 determining the liability for the year 2007-08 under the Central Sales Tax Act, 1956 (hereinafter referred to as the 'CST Act' for short) in respect of the Petitioner, who claims to have received the copy of that order on 13.06.2012.

3. The grievance sought to be ventilated by the Petitioner in this Writ Petition is that the Respondent has declined to take cognizance of the certificates in Form-H that has been produced by the Petitioner for exemption of the export

transactions and thereby, the tax liability of the Petitioner has been enhanced unnecessarily.

4. It is noticed from the Counter-Affidavit filed by the Respondent that the Petitioner had filed the certificates in Form-H claiming exemption for the turnover of Rs. 64,75,072.00/- in respect of export transactions under Section 5(3) of the CST Act. However, nothing has been produced to show that any prior notice had been issued to the Petitioner calling for his explanation for the inability expressed by the Respondent to accept the said Form-H submitted by him. It is beyond cavil that any decision entailing adverse civil consequences to a person shall not be taken against him without affording an opportunity to explain his position in that regard.

5. In that view of the matter, it is not possible to uphold the impugned order insofar as it relates to levy of tax at 12.5% on sale of granites under invalid certificate in Form-H for the turnover of Rs. 42,82,130/-, which shall stand quashed to that extent. Though obvious, it is made clear that inasmuch as no infirmity has been shown in respect of the assessment made on the other components of tax made in the impugned order, the same shall remain undisturbed.

6. It is incumbent upon the Respondent to issue show cause notice insofar as it relates to the refusal to accept the certificate in Form-H submitted by the Petitioner for exemption of tax for export transactions for the turnover of Rs. 42,82,130/- and after receiving the explanation from the Petitioner and affording full opportunity of personal hearing in that regard, a reasoned order shall be passed on merits and in accordance with law, dealing with each of the contentions raised following the prescribed procedure in consonance with the principles of natural justice and the decision taken shall be communicated to the Petitioner under written acknowledgment.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt/dm

To

The Commercial Tax Officer,
Attur (Rural) Assessment Circle,
Attur.

+1cc to the Special Government Pleader(Taxes), S.R.No. 35576

W.P. No. 16291 of 2012

AJS(CO)
GN(20/11/2020)