IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19288 of 2012
and
M.P.No.1 of 2012

M/s. Elgi Electric and Industries Limited,
rep. by General Manager,
Elgi Towers, 737-D,
Green Fields, Puliyakulam,
Coimbatore. ...Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Trichy Road Assessment Circle,
Coimbatore - 18. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned proceedings of the respondent herein in CST.299480/2004-05 and quash the order dated 21.06.2012.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.ANR.Jayaprathap
Standing Counsel

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 21.06.2012 passed by the respondent in CST.299480/2004-05 for the Assessment Year 2004-05.

2. The petitioner was engaged in manufacture of alternators, electric motors and over head travelling cleaners. The petitioner had its head office and factory in Coimbatore and a depot in Pondicherry. The petitioner effected stock transfer to its Pondicherry depot.

3. For taking care of the petitioner's depot in Pondicherry, the petitioner had appointed Tvl. Ritu Logistics, as their 'C' and 'F” agents vide agreement signed between them. Since the enforcement officials of the Commercial Tax Department suspected that the petitioner has not effected

branch transfer, a surprise inspection was carried out on 17.08.2004. During the interregnum, the Tamil Nadu Government replaced in the TNGST Act, 1959 with TNVAT Act, 2006, on 01.01.2007. Thereafter, after a lapse of six years, a notice dated 19.01.2012 was issued to the petitioner, wherein, reliance was placed on Book Marked as A & B together with Book Marked C vide D3 report.

4. The allegation in the notice was that in the agreement entered into the petitioner and its 'C' & 'F' agent namely Tvl. Ritu Logistics, the sales effected should be against full payment (i.e) there should not be any credit of sale and the head office at Coimbatore may authorise any despatch of goods for specific transactions before the receipt of full payment.

5. After issue of notice, the petitioner submitted relevant C-Form, H-Form and F-Form in support of its claim for inter-state sale, stock transfer and export respectively. However, the petitioner did not file any reply to the notice dated 19.01.2012.

6. By impugned order dated 21.06.2012, the respondent has dropped the proceedings as far as the inter-state sale is concerned. However, the respondent has disallowed the entire turnover which was claimed as transfer against C-Form and F-Form.

7. The respondent has justified the impugned order on the ground that though notice was issued to the petitioner, the petitioner did not file any reply and therefore, the impugned order came to be passed.

8. Heard the learned counsel for the petitioner and the respondent.

9. Notice dated 19.01.2012 was issued after the inspection was carried on 17.08.2004 by the enforcement wing of the Commercial Tax Department and records were seized from the petitioner's factory and its depot in Pondicherry. After the records were ceased, notices were issued on 19.01.2012.

10. Meanwhile, TNVAT Act, 2006 came into forced substituted to the TNGST Act, 1959. As per Section 12-C of the TNGST Act, the respondent was required to complete the assessment based on the returns already filed, without insisting on documents or the presence of dealer.

11. As per Section 12-C of the TNGST Act, 1959, the respondent ought to have passed a deemed assessment order based on the returns filed by the petitioner. The said assessment can be re-opened under the provisions of the TNGST Act, 1959 read with Section 88 of the TNVAT Act, 2006.

12. However, without passing a deemed assessment order under Section 12-C of the TNGST Act, 1959, the respondent has straight away issued a pre-assessment notice dated 19.01.2012 to the petitioner based on the inspection carried out by he enforcement official on 17.08.2004 for the Assessment Year 2004-05.

13. Incorporation of Section 12-C into TNGST Act, 1959 on the eve enactment of TNVAT Act, 2006 was merely intended to put an end to the practice of keeping the assessment incomplete. However, merely because no formal assessment order was passed by itself will not mean the assessment cannot be re-opened. The assessment shall be deemed to have been completed.

14. Therefore, in my view, notice dated 19.01.2012 issued to the petitioner was in order though it relied on the findings of the investigation of the enforcement wing in 2004 as there were enough materials for the respondent to re-open the assessment for escaped turnover.

15. The petitioner ought to have participated in the said proceeding and given a proper reply to the said notice. However, the petitioner failed to file a reply. Therefore, the respondent has passed the impugned order. At the same time, before passing the impugned order based on the best judgment method, the petitioner ought to have been put to a proper notice by way of a corrigendum notice to notice dated 19.06.2012. This was however not done in the case.

16. Therefore, I am inclined to set aside the impugned order and remit the case back to the respondent to pass a fresh order in accordance with law. The impugned order shall be treated as a corrigendum to the show cause notice dated 19.06.2012.

17.The petitioner is therefore directed to file a reply within a period of thirty days from the date of receipt of a copy of this order. The respondent shall call upon the petitioner to pass appropriate orders in accordance with law within a period of sixty days thereafter. The entire proceedings shall be completed within a period of ninety days from the date of receipt of a copy of this order.

18. Accordingly, the present Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT) (FAC),
Trichy Road Assessment Circle,
Coimbatore - 18.

+1cc to Mr.B.Raveendran, Advocate SR.No.6529

+1cc to Special Government Pleader (Taxes) SR.No.6833

W.P.No.19288 of 2012
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PA(CO)

GMY(16/03/2020)