IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.3631 of 2020
and WMP No.4269 of 2020

M/s.Ram E & I Systems Private Limited,
Represented by its authorized signatory,
Mr.R.Sivakumar,
No.443, Guna Building, 1st floor,
Anna Salai, Teynampet,
Chennai - 600 018. .... Petitioner

Vs

State Tax Officer,
Alwarpet Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. .... Respondent

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for records pertaining to the impugned assessment order dated 12.12.2019 issued by the Respondent under the Central Sales Tax Act 1956 for the assessment year 2006-07 and quash the same.

For Petitioner : Mr.T.V.Muthu Abirami

For Respondent : Mr.Mohammed Shaffiq,
Special Government Pleader

O R D E R

Mr.Mohammed Shaffiq, learned Special Government Pleader accepts notice for the respondent.

2. By consent expressed by both learned counsel, this Writ Petition is disposed finally even at the stage of admission.

3. The petitioner challenges an order of assessment passed in terms of the provisions of the Central Sales Tax Act, 1956 (in short 'Act') for the period 2006-07 dated 12.12.2019.

4. The petitioner is a dealer and had suffered an order of assessment at the first instance which was challenged in appeal before the first Appellate Authority. The Appellate Authority

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remanded two issues to the Assessing Authority for de novo consideration in the following terms:

> 'The authorized representative has filed details pertaining to details of purchases and sales under transit and direct sales with the sequences of sales transactions. The details furnished by the authorized representative have been perused. On perusal, the learned departmental representative has observed that it has to be verified each and every transaction carefully in depth and hence the case may be remanded for fresh consideration
>
> In view of the above facts and circumstances of the case and relying the above judicial pronouncements, levy of tax on transit sale of Rs.1,19,40,486/- @ 12.6% and levy of higher rate of tax on Rs.68,43,653/- @ 12.6% as ordered by the assessing authority in the impugned order is not sustainable and therefore, set aside the same and remitted back to the assessing authority to verify the statements and other records that would be filed by the appellant before him and to pass fresh order on merit, in accordance with law'

5. It was thus incumbent, in the remand proceedings, for there to have been a detailed examination of the transactions in question by the Assessing Authority.

6. In line with the directions of the first Appellate Authority, the matter was taken up in remand and a notice dated 06.11.2019 was issued calling upon the petitioner to produce documentary evidence in relation to inter-state sales and transit sales in respect of which the petitioner had filed Form 'C' Declarations of amounts of Rs.68,43,653/- and Rs.1,19,40,486/-. The petitioner was granted an opportunity in the following terms:

> 'You may file your objection on the above proposals in writing with documentary evidence before me in my office within 15 days of this notice, and also you are willing to plead your contention by any of PERSONAL HEARING, you may appear at my office at Alwarpet assessment circle any working days at Office hours within 15 days failing which orders will be passed as proposed.'

7. In response to the aforesaid notice, the petitioner filed a detailed response dated 11.11.2019 explaining the transactions and pointing out that though the transactions have been shown as direct sales, the orders had been placed by M/s.GB Engineering, Trichy upon the petitioner for direct supply to M/s.Goa Energy Private Limited at Goa. The contention of the

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petitioner is that these transactions are thus of the nature of inter-state sales. This was followed by impugned order dated 12.12.2019.

8. I am of the view that the impugned order is flawed on two aspects. Firstly, though the respondent has extracted the entire objections as part of the order itself, he concludes that the transactions would only be domestic sales notwithstanding that 'C' Form Declarations have been filed. He notes the position that the delivery address is out of State, but still persists in his conclusion that the sales are only domestic. The transactions have not been examined in detail as directed by the first Appellate Authority. The petitioner has placed on record at pages 18 to 87 of the typed set of papers, documents such as, purchase invoice and challans in relation to the transactions at issue, which are stated to be part of the records before the Assessing Officer. It was thus incumbent upon the Authority to examine the transactions minutely and then come to a decision as to whether the transactions were domestic transactions inter se the petitioner and the vendor or inter state sales. This exercise, in my view, has not been done.

9. It was also incumbent upon the Assessing Authority to have granted an effective opportunity of personal hearing. The Officer has merely called upon the petitioner to appear on 'any working day at office hours within 15 days of the notice'. The Officer cannot be expected to be at his desk at all time to entertain the petitioner/authorised representative and conduct the hearing. It is thus necessary that the personal hearing be fixed by date and time for mutual convenience of the attending parties as well as the officials of the Department.

10. The impugned order is thus set aside for the aforesaid reasons. The petitioner will appear before the Assessing Authority on Wednesday, the 26th of February, 2020 at 10.30 a.m. without expecting any further notice in this regard. Let the issues be examined in detail de novo and a speaking order of assessment be passed within four (4) weeks from date of conclusion of personal hearing.

11. This Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

State Tax Officer,
Alwarpet Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

+1cc to the Special Government Pleader(Taxes), S.R.No. 13778

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