N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.22604 and 22605 of 2011
and
M.P.Nos.1 and 1 of 2011

M/s.Rajesh Trading Company,
Rep. By its partner N.K.Agarwal,
No.22, Jones Street,
Chennai-1. ... Petitioner in W.P.No.22604 of 2011

M/s.Sri Vinayaka Steels,
Rep. By its Proprietor N.K.Agarwal,
No.22, Jones Street,
Chennai-1. ... Petitioner in W.P.No.22605 of 2011

Vs

The Commercial Tax Officer,
Harbour III Assessment Circle,
No.191, NSC Bose Road,
Chennai-1.
... Respondent in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records on the file of the respondent in respective TNGST.0040598/2003-04 and TNGST.0040684/2003-04 dated 23.08.2011 and quash the same as illegal and without jurisdiction.

For Petitioners : Mr.T.Pramodkumar Chopda (in both writ petitions)

For Respondent : Mr.Hariharan
Additional Government Pleader(T)
(in both WPs)

COMMON ORDER

According to the petitioners, they are the registered dealers in iron and steel products, which are classified as declared goods and are assessee on the file of the respondent. In respect of the assessment year 2003-04, they claimed exemption on second and subsequent sale of the declared goods. But the respondent proposed to disallow the said claim and levy tax and penalty under Section 12(3)(b) and Section 10(3) of the TNGST Act, to which the petitioners filed their objections and requested to furnish copies of the records, statement relied upon in the notice and also to grant an opportunity of cross examination of third party, whose statement and records are relied upon and personal hearing. Without considering the said request, the respondent passed the assessment orders dated 30.12.2005. Challenging the same, the petitioners preferred respective W.P.Nos.8297/2006 and 8278/2006, which vide orders dated 24.03.2006, were disposed of by this Court, setting aside the assessment orders and directing the respondent to pass fresh orders, on merits and in accordance with law, after granting opportunity of cross examining the witness, whose statements are relied upon. Pursuant to the same, the respondent issued notices to Mahendrakumar Jain to appear before them on 17.04.2008. Accordingly, the said Mahendrakumar Jain appeared and gave his statement to the effect that from his business concern viz., Aashana Enterprises, Kamlesh Enterprises and Shreyansh Ispat Chennai Pvt. Ltd, he had effected sales of iron and steel products to various dealers. In view of the same, the liability of tax, if any, is only on the earlier seller and not on the petitioners. However, after a lapse of four years, the respondent issued notices to the petitioners proposing to reconfirm the assessment orders. On receipt of the same, the petitioners filed their replies. Without considering the same and without granting opportunity of cross examination of the said witness, the respondent passed the assessment orders dated 23.08.2011 rejecting the claim of the petitioners seeking exemption on second sales. Feeling aggrieved, the petitioners have filed the respective writ petitions to quash the said assessment orders passed by the respondent.



2.Upon notice, the respondent filed a separate counter affidavit, wherein, it is inter alia stated that as per the orders passed by this Court dated 24.03.2006 in W.P.Nos.8297/2006 and 8278/2006, notices were issued on 13.03.2008, 20.09.2010, 08.10.2010 and 17.06.2011 directing the petitioners and S.Mahendrakumar Jain to appear before the respondent for enquiry and cross examination of S.Mahendrakumar Jain by the petitioners; though the petitioners have appeared, S.Mahendrakumar Jain has not appeared for enquiry and cross examination; it is evident that both the parties have colluded and avoided the enquiry and cross examination for their mutual benefit; and therefore, the respondent passed the impugned assessment orders dated 23.08.2011 rejecting the claim of exemption and assessing the turnover to tax at 4%.

3.Though several grounds have been canvassed by the learned counsel for the petitioners in these writ petitions, the only ground which is required to be considered is that the respondent passed the impugned orders, without giving opportunity to the petitioners to cross examine the third parties, from whom the purchases were made and also not providing copies of the records, which are basis for making such assessment and hence, the orders impugned herein are arbitrary, illegal and in violation of the principles of natural justice.

4.The learned Additional Government Pleader appearing for the respondent has made his submission supporting the orders impugned herein. He further submitted that the documents secured from some of the dealers have been declared as bill traders and that the request of the petitioners for securing the witnesses for cross-examination is not possible at this length of time.

5.Heard both sides and perused the materials placed before this Court.

6.It is seen that the present writ petitions are second round of litigation by the petitioners. Canvassing the very same ground, the petitioners already filed W.P.Nos.8297/2006 and 8278/2006 to quash the original assessment orders passed by the respondent. By orders dated 24.03.2006, this Court disposed of the said writ petitions, setting aside the assessment orders and directing the respondent to pass fresh orders, on merits and in accordance with law, after granting opportunity of cross examining the witness, whose statements are relied upon. Pursuant to the said direction, the respondent issued notices to the petitioners as well as the third party witness. Though the petitioners appeared, they were unable to cross examine the said witness due to his non-appearance. So the respondent passed the assessment orders dated 23.08.2011 for the year 2003-04, which are impugned herein.



7.On a careful consideration of the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court, in order to provide an opportunity to the petitioners to substantiate their claim by producing material evidence, is inclined to set aside the orders impugned herein.

8.Accordingly, the impugned orders dated 23.08.2011 passed by the respondent relating to the assessment year 2003-04 are set aside and the matters are remanded back to the respondent for fresh consideration. The respondent is directed to furnish copies of the statements of witnesses, viz. the sellers of the petitioners and also the documents like cancellation of R.C., etc., to the petitioners, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the petitioners shall file their objections along with supporting documents if any, to the respondent within a period of two weeks there from. Thereafter, the respondent shall consider the same and pass appropriate orders on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioners, within a period of four weeks from the date of receipt of objections.

9.Both the writ petitions stand allowed in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli
To

The Commercial Tax Officer,
Harbour III Assessment Circle,
No.191, NSC Bose Road,
Chennai-1.

+1 cc to Spl Government Pleader Sr.No.24006
+1cc to Mr.T.Pramodkumar , Advocate SR.No. 24283

W.P.Nos.22604 and 22605 of 2011

A.SK(28/07/2020)
A.SK(03/08/2020)