IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Writ Petition No.32978 of 2013
&
M.P.Nos.1 and 2 of 2013

M/s. Arempee Compressors Pvt. Ltd.
Rep. By its Managing Director - R.Aditya Vishnu,
S.F.No.549/1B Thadagam Road,
Somaiyampalayam (Post),
Kanuvai,
Coimbatore 641 108 ...Petitioner

..vs..

The Assistant Commissioner (CT) (FAC),
Velandipalayam Assessment Circle,
Coimbatore ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in CST:858377/2007-2008, dated 19.09.2013 and quash the same as illegal and violative of the principles of natural justice, as provided under Section 22 (4) of the TNVAT Act, 2006.

For Petitioner : Mrs. R.Hemalatha

For Respondent : Mr. A.N.R.Prathap,
Govt. Advocate (Taxes)

O R D E R

According to the petitioner, they are the manufacturers of Air Compressor Pump and Spares, registered under the TNVAT and CST Acts. They deal with the products that fall under the heading of 'capital goods' as defined under Section 2 (11) and Entry 25, Part - B of I Schedule of the TNVAT Act, which are taxable at 4% on local sales, (i.e.) inside the State and 3% against Form C on the sales at outside the State. In respect of inter-state sales of goods falling under Section 8 (2) (b) of the CST Act, the rate of tax shall be calculated at 10% or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher. In respect of the capital goods, the rate of tax under TNVAT Act is 4%.

2. It is the further case of the petitioner that the sales, which are not supported by declarations in Form C and falling under Section 8 (2) (b), shall be taxed at 10%, when it involves movement of goods on inter-state basis. With respect to the assessment year 2007-2008, the petitioner had reported a total and taxable turnover at Rs.4,29,11,731/- and Rs.4,19,59,397/- respectively in the Form - I returns filed under the CST Act and claimed exemption on a turnover of Rs.9,52,334/-. After scrutiny of the same, the respondent has issued the assessment proceedings dated 19.09.2013 under Section 22 of the TNVAT Act stating that inter-state transactions not covered by declaration in Form C would be chargeable at 12.5%. Challenging the same, the petitioner has come up with the present writ petition.

3. It is the specific contention of the learned counsel for the petitioner that the respondent committed gross violation of principles of natural justice, since no notice was issued, enabling the petitioner to show cause or explain in person on the action of the respondent in having levied 12.5% tax on transactions that were inter-state in character for want of declarations in Form C.

4. Heard the learned Government Advocate (Taxes) on the submission made by the learned counsel for the petitioner.

5. In terms of Section 22 (4) of the Act, the only recourse available to the respondent is to frame a best judgment assessment. In the case on hand, the respondent had accepted the figures of turnover as furnished in the returns filed by the petitioner, but computed the tax at 12.5% on interstate transactions for want of Form C declarations.

6. Be that as it may. The impugned order suffers from two aspects: i) firstly, no notice was issued prior to passing of the impugned assessment; ii) secondly, no reasonable opportunity of being heard was given to the petitioner. Section 22 (2) provides acceptance of the returns as such and therefore there cannot be partial compliance of the same.

7. Since no notice was issued enabling the petitioner to show cause or explain in person on the action of the respondent in having levied 12.5% tax on transactions that were interstate in character for want of declarations in Form C, this Court is of the opinion that the impugned order has no legs to stand.

8. In such view of the matter, the impugned order dated

19.09.2013 passed by the respondent is directed to be treated as notice for which the petitioner shall file objections within two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to adduce evidence and file necessary documents / forms along with their objections. On receipt of the objections, the respondent/authority shall pass a fresh order, on merits and in accordance with law, that too, after affording an opportunity of personal hearing to the petitioner. Such an exercise shall be completed by the respondent within a period of eight weeks from the date of receipt of a copy of the objections from the petitioner.

9. Accordingly, this writ petition is disposed of. No costs. Consequently the connected MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1.The Assistant Commissioner (CT) (FAC),
Velandipalayam Assessment Circle,
Coimbatore

+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.18934

+1cc to the Government Pleader(Taxes), S.R.No.19341

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KK(CO)
RN(30/05/2020)