IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 38583 of 2015
and
M.P. No. 1 of 2015

M/s. ESAB India Limited,
Rep. by its Vice President – Finance
13, Third Main Road,
Ambattur,
Chennai – 600 058. ... Petitioner

-vs-

1.The State of Tamil Nadu
represented by its Secretary,
CT&RE Department,
Fort St. George, Chennai – 600 009.

2.The Asst. Commissioner (CT)
Pattaravakkam Assessment Circle,
No. 5, Ist floor,
South High Court Colony,
Villivakkam, Chennai – 600 049. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the Respondent in CST.762827/2012-13 and quash the order dated 03.11.2015 passed therein.

For Petitioner : Mr. P.V. Sudakar

For Respondents: Mr. A.N.R.Jayaprathab
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. P.V. Sudakar, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate (Taxes) for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order in CST.762827/2012-13 dated 03.11.2015 passed by the Second Respondent determining the liability of the Petitioner for sales tax for the assessment year 2012-2013 under the Central Sales Tax Act, 1956 (hereinafter after referred to as the 'Act' for short).

3. The grievance sought to be ventilated by the Learned Counsel for the Petitioner is that Form-Q under Section 23 of the Tamil Nadu Value Added Tax Act, 2006, had been filed by the Petitioner before the Second Respondent stating that in respect of an identical question of law for the assessment year 2011-2012, the Petitioner has filed Writ Petitions in W.P. Nos. 26587 and 26588 of 2015, which were pending before the Division Bench of this Court and that the outcome of the same would have to be awaited in respect of the assessment of tax for the Inter-State Sales of welding equipments for the assessment for the year 2012-2013, but the Second Respondent has brushed aside the same and has proceeded to pass the impugned order ignoring the objection raised by the Petitioner in this regard by an absurd reasoning, which reads as follows:-

> " The dealers have already disputed on the similar issue relating to the Assessment order issued for the year 2011-12 under CST Act, 1956 and they have filed W.P. No. 26587 & 26588/2015 before the Hon'ble High Court of Madras and the Court has granted Interim Injunction. Moreover, the dealers have filed Form Q declaration u/s.23 of TNVAT Act, 2006.
>
> As per section 23 of TNVAT Act, 2006, when the assessee claims identical question of law is pending before the Hon'ble High Court of Madras on the rate of tax of the Welding Equipments for the sales made to the other states on the turnover not covered by Form C or without Form C declaration could not be considered to levy of tax at lower rate. As per sec 23(2)(ii) of TNVAT Act, the claim of reduced rate of tax on the sale of Welding Equipments is rejected and orders passed by adopting tax at 14.5%"

Though it is accepted that after the filing of this Writ Petition, the Division Bench of this Court by order dated 15.02.2017 has disposed the Writ Petitions in W.P. Nos. 26587 and 26588 of 2015 filed by the Petitioner challenging the assessment made for the assessment year 2011-2012 answering the identical question of law in favour of the Revenue, it is the contention of the Learned Counsel for the Petitioner that the Petitioner was not in a position to submit any effective objection on consequential factual aspects till that matter had been decided and in such circumstances, the Second Respondent ought to have awaited its outcome instead of hastily proceeding to pass the impugned order.

4. Having regard to the aforesaid submissions made, which deserve acceptance, the impugned order is quashed to the extent of claims disputed by the Petitioner in this Writ Petition and the matter is remitted for fresh determination on those aspects alone. It shall be incumbent upon the Second Respondent to issue fresh notice to the Petitioner in respect of those claims and after affording opportunity to the Petitioner to submit written explanation with supporting documents and personal hearing following the prescribed procedure in consonance with the principles of natural justice, reasoned orders on merits in accordance with law shall be passed dealing with each of the contentions raised and the same 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary,
State of Tamil Nadu
CT&RE Department,
Fort St. George, Chennai - 600 009.

2.The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle,
No. 5, Ist floor,
South High Court Colony,
Villivakkam, Chennai - 600 049.

+1 CC to Mr.B. Raveendran, Advocate sr 36157.

W.P.No.38583 of 2015

SJ(CO)
SP(16/12/2020)