IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

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

W.P. No. 2777 of 2016
and
W.M.P. No. 2314 of 2016

Upasana Engineering Limited,
Represented by its Director,
S. Meenakshi Sundaram,
No. 98-A, 7th Floor,
Dr. Radha krishnan Salai,
Mylapore,
Chennai - 600 004. ...Petitioner

-vs-

The Commercial Tax Officer,
Thiruvallikeni Assessment Circle,
48, Pasumpon Muthuramalingadevar Salai,
Chennai - 600 028. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the Respondent herein in CST 875122/2014-15 dated 31.12.2015 modified in CST 875122/2014-15 dated 13.01.2016 quashing the same, with the direction to the Respondent to consider and pass orders accepting the claim of exemption on export sales and C forms to be filed before him.

For Petitioner : Mr. N. Prasad
For Respondent : Mrs. G.Dhana Madhri
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. N. Prasad, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No. CST/875122/2014-15 dated 31.12.2015 as modified by Order No. CST/875122/2014-15 dated 13.01.2016 issued by the Respondent in which the total and taxable turnover of the Petitioner under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the CST Act' for short) for the year 2014-2015 has been determined in the self-explanatory tabular statement, as follows:-

S.No.	Description	Turnover	Rate of Tax	Tax Due
(i)	Inter-State Sales covered by C Forms	Rs. 28,01,08,289.00	2%	Rs. 56,02,166.00
(ii)	Inter-State Sales not covered by C Forms	Rs. 8,94,47,971.00	14.5%	Rs. 1,29,69,956.00
(iii)	Export under Section 5(1) of the CST Act 1956 not covered by documents	Rs. 22,67,75,618.00	14.5%	Rs. 3,28,82,465.00
	Total and Taxable turnover determined	Rs. 59,63,31,878.00	Tax Due	Rs. 5,14,54,587.00
			ITC Reversal	Rs. 1,00,20,476.00
			Total	Rs. 6,14,75,063.00
			Tax Paid	Rs. 74,01,844.00
			Balance	Rs. 5,40,73,219.00

3. The grievance sought to be ventilated by the Petitioner is that in respect of serial no. (ii) relating to Inter-State Sales not covered by C-Form for the turnover of Rs. 8,94,47,971.00/- for which the rate of tax at 14.5% has been levied, though the Petitioner submitted all the required statutory forms along with documents, the Respondent had refused to receive the same. It is further represented that the said fact was brought to the notice of this Court at the time of admission on 27.01.2016 and this Court had required the Petitioner to produce all the statutory forms along with supporting documents to the Respondent on 10.02.2016 for which the Respondent had to acknowledge its

receipt. It has been placed on record that in furtherance to the said order, the Petitioner had submitted the original Form-C 21 Nos for the value of Rs. 2,16,04,902/- on 02.02.2016 under written acknowledgement.

4. Insofar as the serial no. (iii) relating to Export under Section 5(1) of the CST Act not covered by documents is concerned, it is pointed out that there cannot be any liability for taxation at all for those transactions as per Article 286 of the Constitution of India read with Section 5(1) of the CST Act. It would be necessary for the sake of clarity to extract the aforesaid relevant provisions, which read as follows:-

> "Article 286 of the Constitution of India, 1950:-
> Restrictions as to imposition of tax on the sale or purchase of goods.----
> (1) No law of a State shall impose, or authorise the imposition of, a tax on the sales or purchase of goods where such sale or purchase takes place---
> (a) ......
> (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.
> (2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause
> Section 5 of the Central Sales Act, 1956:-
> When is a sale or purchase of goods said to take place in the course of import or export---(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

On the conspectus of the aforesaid legal provisions, there appears to be substantial force in the aforesaid contentions raised by the Petitioner. However, Learned Counsel appearing for the Respondent points out that the benefit of treating as export transactions cannot be extended without production of relevant documents in support of that claim.

5. Having regard to the rival submissions made, the impugned order in so far as it relates to the levy of tax for serial no. (ii) for Inter-State Sales not covered by C-Form and serial no. (iii) for Export under Section 5(1) of the CST Act, 1956, not covered by documents are alone set aside, and the impugned orders shall remain undisturbed in respect of serial no. (i) relating to Inter-State Sales covered by C-Form, and the matter shall stand remitted to the Respondent for fresh consideration for the aforesaid limited extent. It shall be incumbent upon the

Petitioner to produce documents before the Respondent by 31.12.2020 to substantiate the claim that the transactions falling under serial no. (iii) are eligible for exemption from tax.

6. The Respondent, after affording full opportunity of personal hearing to the Petitioner, shall consider the materials produced on 02.02.2016 in respect of serial no. (ii) relates to Inter-State sales for the value of Rs.2,16,04,902/-, and the documents to be produced by 31.12.2020 in respect of serial no. (iii) relating to Export under Section 5(1) of the CST Act, and re-assess the liability of the Petitioner for tax under the CST Act and for corresponding amount of Input Tax Credit (ITC), deal with each of the contentions raised by the Petitioner and pass reasoned orders on merits in accordance with law following the prescribed procedure in consonance with the principles of natural justice and communicate the decision taken 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

kv/dm

To

The Commercial Tax Officer,
Thiruvallikeni Assessment Circle,
48, Pasumpon Muthuramalingadevar Salai,
Chennai - 600 028.

+1cc to Mr.N.Inbarajan, Advocate, SR.No.36162
+cc to Special Government Pleader, SR.No.36387

W.P. No. 2777 of 2016

SJ(CO)
KKV/03/12/2020