IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.01.2020
Pronounced On	10.01.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.32333 of 2016
and
W.M.P.No.28047 of 2016

M/s.Escorts Limited (Construction & Equipment Division)
Formerly M/s.Escorts Construction Equipment Limited
"Jains Antariksha"
Office No.IV, First Floor,
Building No.7, Ashok Nagar Mai Road,
Kodambakkam,
Chennai 600 024. ... Petitioner

vs

The Commercial Tax Officer - II
Commercial Taxes Department,
II Floor,Room No.24,
100 ft Road, Pudupalayam,
Puducherry 605005. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in Notice No.9628/CTO-II/A2/2001-02 and quash the notice dated 25.08.2016 issued therein.

For Petitioner : Mrs.Hema Muralikrishnan
For Respondent : Mr.J.Kumaran
Additional Government Pleader
(Puducherry)

O R D E R

The petitioner has challenged the impugned notice dated 25.08.2016. The petitioner was given a final opportunity of being heard either in person or through authorised representative and to produce statutory forms for the concession claimed along with the Books of Accounts and Auditor's Report in Form XXVII in support of the returns filed for the year 2001-02 under the Pondicherry General Sales Tax Act, 1967 and Central Sales Tax Act, 1956 at the Office of the respondent on or before 12.09.2016.

2.The impugned notice has been challenged by the petitioner on the ground that there is no valid reason for the respondent to call for such records in the light of Pondicherry General Sales Tax (Assessment) Rules, 2007 which was implemented on the eve of Pondicherry VAT Act, 2007 w.e.f. 01.12.2007.

3.Learned counsel for the petitioner submits that in the light of the above rules, the respondent may be directed to pass deemed assessment order as Rule 3 applies pending assessment for the period up to 2006-2007 under Pondicherry General Sales Tax Act, 1967 (hereinafter referred to as the PGST Act, 1967) and also to pending assessment under Central Sales Tax Act, 1956 (hereinafter referred to as the CST Act, 1956). She further submits that similarly placed persons namely ELGI Electric & Industries were also issued with deemed assessment order by the respondent vide order dated 12.08.2010 which reads as under:-

COMMERCIAL TAXES DEPARTMENT
ASSESSMENT ORDER

Proceedings of the Dy.Commercial Tax Officer-I

Station : Puducherry
Present : Thiru.R.M.Vaithianathan
Date : 12.08.2010

1.Assessment Number and Year: 105135/2004-05

2.Name of the Assessee(s) : ELGI ELECTRIC & INDUSTRIES LTD.,

3.Nature of Business : Sale of Alternator and Motors

4.Place or Place of Business
Puducherry : No.50, 100 Feet Road
Ellaipillaichavady.

5.Turnover Reported (1) Total Rs.31687017
(2) Taxable Rs.31687017

5.Turnover Accepted (1) Total Rs.31687017
(2) Taxable Rs.31687017

ORDER

M/s. ELGI ELECTRIC & INDUSTRIES LTD., dealers in Sale of Alternator and Motors at No.50, 100 Feet Road Ellaipillaichavady, Puducherry reported in their return in Form A1/A2 for the year 2004-05 a turnover of Rs.31687017 and taxable turnover of Rs.31687017 respectively, claiming exemption on a turnover of Rs.0.

The dealer is found eligible for deemed-assessment under the Pondicherry General Sales Tax (Assessment) Rules, 2007 and the return filed by the dealer is accepted and assessed under the Pondicherry General Sales Tax Act, 1967:

Sl. No.	Description	Turnover Rs.	Rate %	Tax Due Rs.
1	Sale of Alternator	31420855.00	1.00	314209.00
2	Motor	266162.00	8.00	21293.00
	Total	31687017.00		335502.00

Tax due : Rs.335502.00
Tax paid : Rs.335502.00

Difference : Rs. Nil
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sd/-
DY. COMMERCIAL TAX OFFICER-I
PUDUCHERRY

To
The Dealer."

4. Learned counsel for the petitioner submits that impugned notice dated 25.08.2016 calling for the information pertaining to the assessment of the year 2001-2002 for the returns filed under PGST Act, 1967 and CST Act, 1956, is belated and is contrary to the mandate under Rules 2 and 3 of the aforesaid Rules.

5.Defending the notice, learned Additional Government Pleader who appears on behalf of the respondent submits that right from December 2007 vide letter dated 14.12.2007, the petitioner was called upon to furnish the records. However, the petitioner repeatedly kept taking time and therefore left with no other option, the respondent was compelled to issue the impugned notice on 25.08.2016 and therefore the respondent cannot be faulted for issuing the aforesaid notice.

6.Heard learned counsel for the petitioner and learned Special Government Pleader appearing for the respondents.

7.The assessment order in question pertains to 2001 to 2002 for which the petitioner has also filed returns. Since PGST Act, 1967 was being replaced with Puducherry VAT Act, 2007, the Government of Puducherry issued the above Rules. The purpose of the aforesaid Rule was to bring finality to the assessment proceedings which had remained incomplete as on 01.05.2007. The respondents ought to have passed a deemed assessment order and thereafter, initiated fresh proceedings under the provisions of the newly inserted Pondicherry VAT Act, 2007 read with Pondicherry General Sales Tax (Assessment) Rules, 2007. Instead, they delayed in passing deemed assessment order in terms of the aforesaid Rules. Therefore, I do not find any merits in the impugned notice.

8.Therefore, the impugned notice is quashed and the respondent is directed to pass appropriate assessment orders in terms of the Pondicherry General Sales Tax (Assessment) Rules, 2007. At the same time, liberty is given to the respondent to initiate appropriate proceedings in accordance with law.

9.The present Writ Petition is allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer - II
Commercial Taxes Department,
II Floor, Room No.24,
100 ft Road, Pudupalayam,
Puducherry 605005.

+1cc to Government Pleader, SR.No.2570.

Order
in
W.P.No.32333 of 2016
and W.M.P.No.28047 of 2016

NMI(CO)
CSR: 06.02.2020