IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021
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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 13943 & 13944 of 2012
and
M.P. Nos. 2, 2 of 2012
(Through Video Conferencing)

M/s.Nathan & Co
Represented by its Partner
Mr.T.R.Suryaprakash,
No.281, Velachery Road,
Velachery, Chennai - 600 042. ...Petitioner in both W.Ps

Vs.

The Commercial Tax Officer,
Now Known as Assistant Commissioner (CT),
Velachery Assessment Circle,
No.19, 4th Main Road,
Nanganullur, Chennai - 600 061. ...Respondent in both W.Ps

Prayer in W.P. No. 13943 of 2012: 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 TNGST 0980373/2003-04 quash the impugned proceedings dated 29.02.2012.

Prayer in W.P. No. 13944 of 2012: 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 TNGST 0980373/2004-05 quash the impugned proceedings dated 29.02.2012.

For Petitioner (in both W.Ps) : Mr.V.Sundareswaran
For Respondent (in both W.Ps) : Ms.G.Dhanamadhri
Government Advocate

COMMON ORDER

By this common order, both these writ petitions are being disposed of.

2. The case of the petitioner is that the petitioner is engaged for printing of text books which is exempt under Section 8 of the TNGST Act, 1959 read with Entry 50(iii)/Schedule III of the TNGST Act. The petitioner had originally filed returns

and claimed the benefit of Section 3G of the TNGST Act, 1959 and opted to pay tax on the compounded rate of tax. It is submitted that Section 3G of the TNGST Act, 1959 is specifically intended to give the benefit to persons like the petitioner who are engaged in printing activity. In the course of printing activity, the petitioner has also procured some of the specified inputs at concessional rate of tax under Section 3(3) of the TNGST Act, 1959 which inter alia allows the persons engaged in manufacturing activity to procure goods against Form-XVII.

3. Though the assessment was accepted originally, the respondent sought to revise the assessment pursuant to an inspection of the petitioner's premises on 10.02.2005. Thereafter a notice dated 19.03.2010 was issued to the petitioner seeking to include the entire turn over including valuation of the papers supplied by the persons for whom the petitioner had carried printing activity namely Tamil Nadu Text Book Society. The petitioner replied to the notice dated 19.03.2010. Thereafter, a revised notice dated 24.03.2010 was issued to the petitioner. It was stated that the petitioner was not entitled to procure the goods against Form-XVII under Section 3(3) of the TNGST Act, 1959. The notice issued to the petitioner resulted in the two impugned orders dated 29.02.2012 for the respective Assessment Years 2003-04 and 2004-05.

4. By the impugned orders, the respondent has sought to disallow the labour charges and the benefit of procurements against Form-XVII under Section 3(3) of the TNGST Act. Accordingly it has calculated the tax payable by the petitioner for the respective Assessment Years. In the impugned order, the respondent has also imposed penalty under Section 23 of the TNGST Act, 1959.

5. Heard the learned counsel for the petitioner and the respondents.

6. The principal issue on which the demand has been confirmed is on account of the dis-allowance of labour charges involved in the execution of works contract for printing activity. The second issue pertains to denial of the benefit of procurement against Form-XVII under Section 3(3) of the TNGST Act, 1959 on certain inputs allegedly used for printing purpose. It is however not clear on what basis, the petitioner opted to pay tax under Section 3G of the TNGST Act, 1959 when even according to the petitioner, the entire transaction was exempted in terms of Section 8 of the TNGST Act read with Entry 50(iii)/ Schedule III of the TNGST Act. This would require a proper determination, reasoning and adjudication by the respondent. The impugned order has neither given any reason for the same nor as the petitioner explained the same before this Court.

7. It is noticed that the claim for procurement of goods against Form-XVII under Section 3(3) of TNGST Act, 1959 was not available as the petitioner was neither engaged in manufacturing activity or assembling, packing or labelling in connection with such manufacture inside the State.

8. It is also noticed that the impugned orders has been passed without following the Principles of Natural Justice and is therefore contrary to Section 23 of the TNGST Act, 1959. As per the said provision, penalty can be imposed only after giving reasonable opportunity to a noticee. Since there is a violation of Principles of Natural Justice, the impugned orders passed by the respondent is liable to be quashed. Accordingly, the impugned orders are quashed.

9. The petitioner has approached this Court in the year 2012 and thereby deprived the revenue of the benefit of the amount of tax by wrongly availing the concession under Section 3 (3) read with Form-XVII. Therefore, the petitioner shall deposit a token amount of Rs.1,00,000/-, against the alleged amounts used in Form-XVII under Section 3(3) of the TNGST Act, 1959 as deposit within a period of four weeks of receipt of this order.

10. It is needless to state that this amount which is to be paid by the petitioner is without prejudice to the rights of petitioner. The amount paid shall be treated as a deposit and in the event of the petitioner succeeding before the respondent, the deposited amounts shall be returned or adjusted against the tax due.

11. The impugned orders which stand quashed by this order shall be treated as Show Cause Notice and the amount paid by the petitioner in pursuance to the directions of this Court shall treated as pre-deposit. The petitioner may file its reply/representation within a period of 4 weeks. The respondent shall thereafter pass appropriate order within a period of 3 months after hearing the petitioner. The present Writ Petition stands disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

The Commercial Tax Officer,
Now Known as Assistant Commissioner (CT),
Velachery Assessment Circle,
No.19, 4th Main Road,
Nanganullur, Chennai - 600 061.

+1cc to Special Government Pleader, S.R.No.04475

W.P. Nos. 13943 & 13944 of 2012
and
M.P. Nos. 2, 2 of 2012

RR(CO)
KKV/18/03/2021