IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.12504 OF 2006

Tvl.Coimbatore Metal and Engineering Corporation,
Represented by its Proprietor H.Shabbir,
87-C, Stadium Street,
Grey Town, Coimbatore - 18. ... Petitioner

..Vs..

The Deputy Commercial Tax Officer,
P.N. Palayam Assessment Circle,
18, Balasundaram Road,
Coimbatore - 18. ... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent in TNGST 2160446/2004-05 (Entry Tax) dated 30-03-2006 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The original assessment order dated 30.03.2006 is under challenge in the present Writ Petition. The petitioner is a registered dealer and an assessee on the books of the respondent. The petitioner deals in SS Rods, ferrous and non-ferrous metals mainly supplying to industries situated in and around Coimbatore. The purchases of the materials are effected mainly from outside of the State of Tamil Nadu on issuance of Form C and the sales are mainly made on the basis of Form XVII issued by the buyers within the State of Tamil Nadu. For the assessment year 2004-05, the petitioner reported total and taxable turnover of Rs.99,48,283/-. On examination of the accounts of the petitioner, the respondent passed an order under TNGST Act dated 30.03.2006 accepting the turn over as per the books. Besides assessment order under the TNGST Act 1959, the respondent has passed an impugned order under the Tamil Nadu Tax on Entry of Goods into Local Areas Act dated 30.03.2006 demanding payment of entry tax and also levying penalty for non-payment of entry tax in respect of SS Rods purchased from outside the State.

2. The learned Counsel for the petitioner made a submission that the petitioner has paid the entry tax in entirety, in this regard, a reference was made even in the assessment order. It is admitted that the sale of SS Rods has been assessed and the petitioner has paid a sum of Rs.21,513/- towards tax. Thus, the respondent has initiated actions based on incorrect particulars and therefore, the Writ Petition is to be considered.

3. The respondent in his counter categorically stated that the petitioner failed to file extract of Form 8 which is prescribed under Rule 10(5) of the Central Sales Tax (Tamil Nadu Rules 1957) as register of declaration forms maintained. The petitioner had obtained C forms and issued to other state supplies, but he failed to reveal the usage of declarations and thereby he suppressed the interstate purchases. Of course, the contention of the petitioner that two assessment orders were passed by the respondent is accepted but the petitioner must know that the sales were taxed under Tamil Nadu General Sales Tax Act but the value of interstate/import purchases of SS Rods (being a scheduled commodity in Entry Tax Act 2001) was assessed under Entry Tax Act. The petitioner never filed any monthly return in Form 1 prescribed under Entry Tax Act, nor disclosed his interstate purchases of SS Rods.

4. Para No.10 of the counter also reveals certain facts which are as follows:

> "10. With regard to the averments made in para 5 of the affidavit, it is respectfully submitted that to avoid 12% taxation as mentioned by the petitioner, set-off provision is provided in the Entry Tax Act 2001. The question was whether the petitioner paid Entry Tax at 4% and sales tax 4%. He has not proved that he had paid both entry Tax and sales tax on the same goods, viz., SS Rod. The petitioner has to prove his plea with quantitative details for both purchases and sales of SS Rods and also for stock of goods held as opening stock and closing stock. He dealt not only with SS Rods, but Brass Rods,

> copper rods, brass sheets, copper sheets, SS sheets, aluminum sheets also. So, 12% tax sufferance alleged by the petitioner has of no merits".

5. Perusal of the allegations and counter allegations made by the respective parties to the lis on hand, this Court is of the considered opinion that the adjudication of facts is necessary as the facts are disputed between the parties. The petitioner claimed that he has filed return of income and paid the tax. However, the respondent says that the petitioner has not filed the details and suppressed certain facts. In view of the disputed facts, the petitioner has to prefer an appeal before the Competent Appellate Authority for resolving the issues. Such disputed facts cannot be adjudicated by the High Court in a writ proceedings under Article 226 of the Constitution of India. Such an exercise is to be done by the Competent Appellate Authority based on the original documents and evidences to be produced by the respective parties. This being the procedure to be followed, filing of an appeal in the present case is imminent as the Appellate Authority is the final fact finding authority.

6. Under these circumstances, the petitioner is at liberty to prefer an appeal before the Jurisdictional Appellate Authority within a period of four weeks from the date of receipt of a copy of this order by following the procedures as contemplated and after applying statute and in the event of filing any such appeal by the petitioner, the respondent shall condone the delay and dispose of the said appeal on merits and in accordance with law and by affording an opportunity to the writ petitioner as expeditiously as possible.

7. With these directions, this Writ Petition stands disposed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

drm / vji

To

The Deputy Commercial Tax Officer,
P.N. Palayam Assessment Circle,
18, Balasundaram Road,
Coimbatore- 18.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.43594
+1cc to the Special Government Pleader (Taxes), S.R.No.43717

W.P.NO.12504 OF 2006

AK(CO)
PBS/17/09/2021