BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.02.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.15872 of 2014
and
M.P.(MD)No.1 of 2014

M/s.Hi Tech Arai Limited,
Represented by its Company Secretary S.Ganesh Babu,
Shed No.D-44, Industrial Estate,
Kappalur, Madurai. ... Petitioner

Vs

The Assistant Commissioner (CT),
Thirupparankundram Assessment Circle,
Madurai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in CST: 741404/2010-11, dated 14.06.2012 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to reopen the assessment by considering the representation of the petitioner dated 27.06.2012 in accordance with law within stipulated time.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.S.Dayalan
Government Advocate

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2.The petitioner is an assessee registered with the respondent. The respondent issued pre-assessment notice on the petitioner for the assessment year 2010-2011 (CST).

3.The case of the respondent is that while the petitioner reported an interstate sales against C Form declarations to the tune of Rs.194,49,77,972/-, the C Form declarations filed by the petitioner were defective. In the remarks column, it has been mentioned that the invoice number and dates have not been given. Therefore, the respondents proposed to levy tax. In response to the said pre assessment notice, the petitioner submitted their reply on 16.04.2012. The petitioner also made available the necessary documents and records. Rejecting the explanation given by the petitioner, the impugned order came to be passed levying a sum of Rs.64,83,173/- as balance tax to be paid by the petitioner. Challenging the impugned order dated 14.06.2012, the writ petition came to be filed in the year 2014.

4.When the matter was taken up for hearing, the learned Government Advocate appearing for the respondent submitted that the writ petition has to be dismissed, since the alternative remedy of appeal has not been exhausted. The respondent has filed a counter affidavit and the learned Government Advocate took me the contents thereof.

5. The petition regarding non exhaustion of alternative remedy can be disposed of easily. If the petitioner can demonstrate violation of the principles of natural justice, then it is a ground for bypassing the alternative remedy. Secondly, even though the petitioner had filed the writ petition way back in September 2014, on account of non obtaining of interim order, a sum of Rs.64,83,173/- representing the impugned demand was collected from the petitioner herein. The petitioner herein, while remitting the said amount, had made it clear that the payment was without prejudice to their rights in the pending writ petition. Since the entire tax amount was already paid by the petitioner, I am of the view that in the writ petition itself, the contentions urged by the petitioner can be gone into.

6.The learned counsel appearing for the petitioner took me through the impugned order.

7.I find that in the impugned order, quite a few transactions were held liable to higher rate of tax at 12.5% on the sole ground that annexures were not filed. The petitioner's counsel drew my attention to the materials enclosed along with the reply. It is seen therefrom that the petitioner had given invoice particulars including the date and the amount covered thereby. In the pre-assessment notice, the ground taken by the respondent was that the petitioner has not made available the invoice details. All those details have been made available, when the petitioner submitted his reply. The respondent had casually rejected the same by observing that the annexures have not been filed. I am satisfied that annexures were filed by the petitioner before the respondents.

8.In this view of the matter, the order impugned in the writ petition is quashed. The Writ Petition is allowed. The matter is remitted to the file of the respondent to pass order in accordance with law. The respondent will afford one more opportunity of personal hearing to the petitioner before passing final orders. Whether the tax amount of Rs.64,83,173/- already paid by the petitioner herein is to be refunded to the petitioner or not will abide by the order to be passed by the respondent following this remand. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Rmi

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner (CT),
Thirupparankundram Assessment Circle,
Madurai.

+1 CC to Mr.S.KARUNAKAR, Advocate (SR-5546[F] dated 17/02/2021)

+1 CC to SPL GP (SR-5686[F] dated 17/02/2021)

W.P.(MD)No.15872 of 2014
16.02.2021

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