IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.7473 of 2019
&
WMP.No.8132 of 2019

M/s.Bharat Heavy Electricals Limited
Represented by Deputy General Manager/Finance,
Mr.N.Ramesh, Indira Gandhi Industrial Complex,
Ranipet.

... Petitioner

Vs

The Assistant Commissioner (ST),
Ranipet (SIPCOT), Ranipet.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN 33024364741/2014-15 dated 13.02.2019 quashing the same.

For Petitioner :Mr.K.Narayanan for
Mr.N.Inbarajan

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader

O R D E R

The challenge is to order of assessment dated 13.02.2019 passed under the provisions of the Tamil Nadu Value Added Taxes Act, 2006 (in short 'Act') for the period 2014-15. The two grounds raised and argued turn upon the principles of natural justice and on the nature of the addition itself.

2.On the ground of natural justice, the first notice for Revision was issued on 14.12.2016, to which a reply has been filed by the petitioner on 25.01.2017. Thereafter, a notice came to be issued on 11.04.2017 both in terms of the provisions of the Central Sales Tax Act, 1956 as well as the TNVAT Act, followed by notices on 06.09.2018.

3.One of the proposals for assessment relates to a difference in turnover as per the balance sheet of the petitioner as compared with the monthly returns filed by it. The Assessing Authority arrives at a difference of a sum of Rs.143,17,23,818/- and brings the aforesaid amount to tax as alleged sales suppression on the ground that there has been short reporting of turnover. Tax has been levied at 14.5% on this amount.

4.The submissions of learned counsel for the petitioner are that the difference arises solely from the fact that monthly returns have been filed by the petitioner only for nine months. To this effect, a copy of certificate of registration in Form-D have been placed on record at page No.1 of the additional typed set dated 31.01.2022 which reveals that the petitioner has been registered for the purposes of commercial taxes, on 27.06.2014.

5.However, the balance sheet of that unit for the entirety of the financial year petitioner has been taken note of by the assessing authority and the turnover for the period of three months prior to the date of incorporation has also been included for the purposes of tax. It is the specific case of the petitioner that prior to incorporation of this petitioner as a dealer, the turnover of the unit was being assessed in the hands of BHEL, Trichy which holds a separate registration as dealer. They submit that the turnover attributable to the period from April to 26.06.2014 has been offered to tax in the monthly returns of BHEL, Trichy. This is a question of fact to be looked into and confirmed by the authorities.

6.It is also a fact that the above submission has not been made before the respondent in course of assessment proceedings and no ground to this effect raised by the petitioner in its letters dated 19.09.2018, 16.10.2018 and 22.12.2018. In fact, the last letter, dated 22.12.2018, only seeks time up to 28.02.2019 for filing of a reply.

7. Though an assessee is certainly entitled to seek an adjournment or adjournments, in order to seek proper assistance, equip itself fully with all necessary documents and details and prepare its defence, the petitioner has, in the present case, sought time on multiple occasions i.e.11.06.2019, 09.07.2019, 13.08.2019, 21.09.2021, 30.11.2021, 07.12.2021, 19.01.2022 and 20.06.2022, and the number of adjournments sought are, in my view, excessive.

8.Be that as it may, and notwithstanding the delay on the part of the petitioner, it was incumbent upon the assessing authorities to have afforded an opportunity of personal hearing to the petitioner prior to completion of assessment. Admittedly, in this case, no personal hearing has been afforded and had such personal hearing been afforded, it is likely that the issue, as noticed above, could/would have been resolved across the table.

9. The mandate cast upon an assessing authority to finalise assessments in accordance with the principles of natural justice and afford personal hearing, has been reiterated on several occasions by the Court and under instructions of the Special Commissioner, Commercial Taxes, to all Assessing Authorities in the State. Since this has not been done, the impugned assessment order is found to be violative of the principles of natural justice, and set aside.

10.I am also persuaded in this regard by an offer from Mr.N.Inbarajan, learned counsel for the petitioner made upon instructions from the petitioner, to the effect that the petitioner is willing to be put to terms to have the benefit of this order. He offers that the petitioner will remit 15% of the disputed tax within a period of four (4) weeks from today. This Court sees no reason why the revenue should be deprived of the benefit of the aforesaid offer, seeing as it comes voluntarily and spontaneously from the petitioner.

11.It is made clear that if the amount as aforesaid is not remitted, the impugned assessment order revives, without any further reference to the petitioner. Simultaneous with the remittance of the amount, the petitioner is permitted to file a written submission along with supporting documents explaining its stand to the proposals contained in the various notices as well as the issues dealt with in the impugned order, and upon receipt of the written submissions, the petitioner shall be heard and orders of assessment passed de novo within a period of six (6) weeks from the date of receipt of the written submissions.

12.This Writ Petition stands disposed as above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kbs

To

The Assistant Commissioner (ST),
Ranipet (SIPCOT), Ranipet.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.37970
+1cc to the Government Pleader, S.R.No.38320

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GPL[co]
NSK/26/07/2022