BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.03.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**
W.P.(MD) Nos.10578 and 10580 of 2020
and
M.P.(MD) Nos.9336 and 9337 of 2020

M/S.Revathy Fireworks Industries,
represented by its Partner A.Vasantha Vikash,
No.8/217 G, Anuppankulam,
Sivakasi,
Virudhunagar District.

... Petitioner in both W.Ps.,

/vs./

The State Tax Officer-II,
Sivakasi II Assessment Circle,
Commercial Tax Buildings,
Sivakasi.

... Respondents in both W.Ps.,

PRAYER in W.P.(MD) No.10578 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records in assessment order issued by the respondent in CST No.832316/2012-13 dated 12.02.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act as per law.

PRAYER in W.P.(MD) No.10580 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records in assessment order issued by the respondent in TIN No.33445982179/2012-13 dated 12.02.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act as per law.

For Petitioner in both W.Ps., : Dr.A.Thiyagarajan Senior Counsel for Mr.S.Karunakar

For Respondent in both W.Ps., : Mr.J.K.Jayaseelan Government Advocate

COMMON ORDER

The petitioner has challenged the impugned assessment order dated 12.02.2020 for the assessment year 2012-2013 under the TNVAT Act and the Central Sales Tax Act, 1956.

2.The petitioner was issued with pre-assessment notice. The pre-assessment notice is predicated on the ground that on perusal of Audited Trading and Profit and Loss Account of the petitioner during the year 2012-2013, it was noticed that the petitioner had reported their purchases and sales turnovers as detailed below:-

"Purchase of raw materials : Rs.60,50,929/-
Sales : Rs.62,29,442/-"

3.The pre-assessment notice also stated that on referring to the documents/records/information retrieved from the CPUs/Laptops seized from the business premises of the petitioner and also from the office premises of the sales tax consultant, the Central Excise Authorities have arrived at the assessable value of the goods cleared for sale during the year 2012-2013 as Rs.2,87,41,282/-. The respondent has therefore reworked the value of the goods/inputs/raw materials purchased and has arrived at the purchase tax, which was not paid by the petitioner and therefore, under the impugned order, the petitioner has been asked to pay the purchase tax.

4.It is the case of the petitioner that not only the petitioner but also the petitioner's sister concerned, namely, Vadivel Pyrotechs Private Limited and other concerns were inspected by the Central Excise Authority and no importance can be attached to the information furnished by the Central Excise Department to conclude that there was a escaped turn over of Rs.2,28,72,836/- and to arrive at the purchase tax under the TNVAT Act, 2006.

5.The learned Senior Counsel for the petitioner fairly submits that at the time when the pre-assessment notices were issued to the petitioner and the revision order was passed, the Central Excise case was still at the adjudication stage and no order has been passed. The learned Senior Counsel fairly concedes that an adverse order has been passed during the pendency of this writ petition and the petitioner is in appeal before CESTAT, Chennai.

6.Opposing the prayer, the learned counsel for the respondent submits that the assessment of Vadivel Pyrotechs Private Limited is inconclusive and has no relevance. It is submitted that reference to the appeal that is pending at the behest of the Vadivel Pyrotech Private Limited, Chennai in Appeal No.E/41748/2018-DB also has no relevance.

7.I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondent.

8.There are overwhelming evidence that were available with the respondents based on the records from the Central Excise Department. It concludes that the petitioner may have indulged in suppression of turnover. In the impugned order, only the proportionate purchase tax on the raw materials from input purchase has been confirmed. The petitioner was issued with proper notice, to which the petitioner has not replied properly.

9.The only ground, on which the pre-assessment notices were opposed, was that adjudication under the Central Excise Act had not yet completed and that certain proceeding at the behest of Vadivel Pyrotech Private Limited, Chennai was pending before this Court. The respondent while confirming the demand under the provisions of the TNVAT Act, 2006 and under the provisions of the Central Sales Tax Act, 1956 are guided by the principles of preponderance of probability. The burden of proof was on the petitioner to distance itself from the proposals contained in the pre-assessment notice. Be that as it may, the issue has to be decided before the appellate authority under the TNVAT Act.

10.Under these circumstances, these writ petitions stand dismissed by directing the petitioner to file a statutory appeal against the impugned assessment orders within a period of 30 days from the date of receipt of a copy of this order. If such appeal is filed within such time, the appellate Commissioner shall consider the same and pass appropriate orders on merits and in accordance with law. It is open for the petitioner to make all submissions that are available both on facts and on law before the Appellate Commissioner. The Appellate Commissioner shall pass orders on merits uninfluenced by any of the observation contained in the writ petition as the observation contained in this order is only to conclude that the petitioner has not made a case for interference under Article 226 of the Constitution of India. The issue relating to merits will have to be independently decided by the appellate Commissioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: Registry is directed to return the certified copy of the original orders impugned in these two writ petitions to the learned counsel for the petitioner after getting acknowledgement from him to file a statutory appeal before the appellate Commissioner.

To

1. The State Tax Officer-II,
 Sivakasi II Assessment Circle,
 Commercial Tax Buildings,
 Sivakasi.

2. The Section Officer, E.R.Section,
 Madurai Bench of Madras High Court,
 Madurai. (To return the certified copy of the original orders impugned in these two writ petitions to the learned counsel for the petitioner after getting acknowledgement from him to file a statutory appeal before the appellate Commissioner.)

+1 CC to M/s.SPL GP (SR-9457[F] dated 02/03/2022)

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