BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.23735 of 2022
and
W.M.P.(MD) Nos.17812 of 2022 & 2894 of 2024

M/s.Standard Fire Works (P) Ltd.,
(Represented by the Director,
Mr.P.Jaisankar)
No.1/3, Thiruthangal Road,
Sivakasi - 626 123. ... Petitioner

Vs.

The Assistant Commissioner (ST)-3,
Tamil Nadu Commercial Taxes Department,
Commercial Taxes Building,
N.G.O. Colony,
Satchiyapuram, Sivakasi - 626 123. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the files of the respondent herein, in his proceedings in A4/14(a)/2020-TIN-33656000251 dated 19.09.2022 and quashing the same and directing the respondent herein to exercise the power under Section 81 of the Tamil Nadu Value Added Tax Act, 2006 as prayed for by the petitioner in its Application dated 09.09.2022.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

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O R D E R

The petitioner is before this Court challenging the impugned communication dated 19.09.2022 issued by the respondent in response to the reply of the petitioner dated 09.09.2022 in the context of Show Cause Notices dated 17.12.2021, 27.01.2022, 14.07.2022 and etc.

2. The petitioner appears to be an assessee under the Central Excise Act, 1944 as well and was issued with the Show Cause Notice No.141/2018 dated 27.10.2018 bearing reference F.No.INV/DGGSTI/CZU/CE/41/2017/10217 and OR No.148/2017. The petitioner opted to settle the aforesaid case for slandur removal under the Sabka Vishwas (Legacy Dispute Resolution) (SVLDR) Scheme, 2019 [Chapter V of the Finance Act, 2019].

3. The case of the petitioner is that statements were recorded from several persons including the Directors and Sales Representatives and

some of the buyers of the petitioner who had subsequently retracted their statements and therefore, the Department should exercise the power under Section 81 of the Tamil Nadu Value Added Tax Act, 2006 which has been rejected by the respondent *vide* the impugned communication dated 19.09.2022.

4. The learned counsel for the petitioner has placed reliance on the decision of the Division Bench of this Court in **State of Tamil Nadu** Vs. **A.N.S.Guptha and sons**, [2011] 38 VST 45 (Mad) rendered in the context of Section 54A of the Tamil Nadu General Sales Tax Act, 1959 which is *pari materia* with Section 81 of the Tamil Nadu Value Added Tax Act, 2006.

5. It is submitted that any proceedings without issuance of summons to the persons requested by the petitioner for cross-examination would be in violation of principles of natural justice and therefore, the impugned communication has to be quashed by directing the respondent to issue summons to the persons for cross-examination. Merely because the petitioner has replied to the Show Cause Notice dated 27.10.2018 and merely because the petitioner has opted to settle the dispute under the

Sabka Vishwas (Legacy Dispute Resolution) (SVLDR) Scheme, 2019 [Chapter V of the Finance Act, 2019] would not mean that the petitioner has admitted its liability and therefore, the petitioner is not entitled to cross-examine the persons from whom the statements were earlier recorded.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

7.The Show Cause Notice issued under the Central Excise Act, 1944 appears to be the basis of Notice issued to the petitioner under the Tamil Nadu Value Added Tax Act, 2006. In the course of investigation, statements were obtained from about 44 persons which included the Directors, Sales Representatives and some of the buyers of the petitioner. Almost all persons have retracted their statements on 25.09.2019 & 26.09.2019.

8. Therefore, the question of the petitioner asking the Department to issue summons to the said persons for cross-examination cannot

countenanced. On the other hand, it is open for the petitioner to produce these persons as witnesses with right to cross-examine them by the Department. As such, prayer in this Writ Petition is not maintainable. Therefore, this Writ Petition is liable to be dismissed.

9. The respondent is directed to proceed with the adjudication of the Show Cause Notice and pass appropriate orders by duly complying with the principles of natural justice, within a period of 6 months from the date of receipt of a copy of this order.

10. It is made clear that in case the petitioner brings any of those persons from whom the statements were earlier recorded, it is open for the respondent to cross-examine them.

11. This Writ Petition stands dismissed with the above liberty. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.06.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

Copy To:

The Assistant Commissioner (ST)-3,
Tamil Nadu Commercial Taxes Department,
Commercial Taxes Building,
N.G.O. Colony,
Satchiyapuram, Sivakasi - 626 123.

C.SARAVANAN, J.

JEN

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