(2014) 06 MAD CK 0240

In the Madras High Court

Case No : Writ Petition Nos. 15655 and 15656 of 2014 and M.P. Nos. 1 and 1 of 2014

K.J.K Polydiamonds International Pvt. Ltd. — APPELLANT

Vs

The Assistant Commissioner (CT) — RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0240

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—By consent, the main Writ Petitions are taken up for final disposal at the time of admission itself.

2.Heard, Mr.D.Vijayakumar, learned counsel appearing for the petitioner and also Mr.Kanmani Annamalai, Additional Government Pleader (Taxes), who has taken notice on behalf of the respondent.

3.The petitioner has come up with these writ petitions to quash the proceedings of the respondent dated 13.03.2014 and 27.02.2014 for the assessment years 2007-08 and 2008-09 respectively and to direct the respondent to consider the representation dated 19.05.2014 and pass fresh assessment orders.

4. Learned counsel appearing for the petitioner would submit that the respondent has passed the impugned assessment orders without verifying the fact that "C" declaration forms were already filed. According to the petitioner, the respondent directed them to produce the proof for filing the C forms and the petitioner sought for more time to produce the proof. However, without considering the same, the respondent has issued the impugned order. It is the further case of the petitioner that the respondent had disallowed the exemption for the export sales and sales return transactions stating that the petitioner had not produced any documentary evidence in support of the export sales transaction. Learned counsel for the petitioner would further submit that if opportunity is given to the

petitioner, they will represent the case before the authority with all required documents.

5.The learned Additional Government Pleader appearing for the respondent submitted that for the assessment year 2007-08 the petitioner has produced the ''''C'''' declaration forms and for the assessment year 2008-09 the same was not produced. He would, however submit that, if the petitioner produces the necessary documents as directed by the authorities, the same will be considered by the respondent along with the reply of the petitioner dated 19.05.2014 and redo the assessment for both the assessment years.

6. I have considered the above submissions.

7. The fact remains that the petitioner has produced the ''''C'' forms pertaining to the assessment year 2007-08 and the same has not been produced for the assessment year 2008-09. The further fact remains that if the petitioner is given an opportunity to produce the Declaration Form in Form-C and also if its reply dated 19.05.2014 is considered, then, they will be able to substantiate their claim that they are not liable to pay any tax.

8. Taking into consideration of the above, as the Declaration Form in Form-C is now readily available with the petitioner and also the contention of the petitioner that if the same is allowed to be produced before the respondent, then, they will be able to substantiate that they are not liable to pay any tax at all and also the fact that the assessee can be permitted to produce the Declaration Form in Form-C, within five years from the assessment year, with sufficient reasons, I am inclined to set aside the impugned assessment orders and the matter is remitted back to the respondent only to the limited extent to decide the matter afresh after taking into consideration the reply of the petitioner dated 19.05.2014 along with Form-C, if it is within time.

9. In the result, both these writ petitions are allowed and the impugned assessment orders of the respondent, dated 13.03.2014 and 27.02.2014 pertaining to the assessment years 2007-08 and 2008-09 respectively are set aside. This matter is remitted back to the respondent to decide the matter afresh. It is further directed that if the respondent needs any other document, he shall inform the same to the petitioner, so as to enable the petitioner to produce the same. The petitioner also without waiting for any further notice shall submit Form-C or any other documents in his custody pertaining to the assessment year 2008-09 and shall also appear for the enquiry in the date to be fixed by the respondent. The petitioner is further directed to co-operate with the respondent in production of further documents, if any and conclude the enquiry. Thereafter, the respondent shall decide the matter afresh and also consider the reply of the petitioner, dated 19.05.2014 and pass orders, on merits and in accordance with law, as expeditiously as possible. Consequently, the connected Miscellaneous Petitions are closed. No costs.

