IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.11147 & 11148 of 2015

M/s Kothari Industrial Suppliers
represented by is Proprietor Pankaj Kothari
116/41-B2, Vaithiyanatha Mudali Street
Chennai-81 ... Petitioner in both the writ petitions

-vs-

The Commercial Tax Officer
Tondiarpet Assessment Circle
Kummalamman Koil Street
Chennai-81 ...Respondent in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records of the respondent in TIN 33151202518/2010-11 and 2013-14 respectively, dated 3.3.2015 and quash the same.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader

ORDER

These writ petitions have been filed by M/s Kothari Industrial Suppliers represented by its Proprietor Mr.Pankaj Kothari challenging the impugned orders dated 3.3.2015 passed by the Commercial Tax Officer, Tondiarpet Assessment Circle for the assessment years 2010-11 and 2013-14 respectively, on the ground that the respondent has erred in passing the impugned proceedings without verifying the accounts of the sellers doing business in the State of Tamil Nadu, more particularly, when the petitioner had filed xerox copies of the tax invoices along with their reply for proof of movement of goods, without verifying the tax invoices furnished before him, he should not have confirmed the proposals. Adding further, the learned counsel submitted that at the time of purchase, the sellers were active dealers and that the petitioner had also filed xerox copies of the tax invoices. That apart, when the notices dated 12.11.2014 were issued, without mentioning the proposal for penalty under Section 27 (3), the impugned orders ought not to have been passed with penalty under Section 27(4) of the Tamil Nadu Value Added Tax Act. Concluding his arguments, he has submitted that when the petitioner, on receiving the previous consolidated notice dated 19.9.2013, had submitted the reply dated 4.2.2014 explaining in detail that in no case the input tax credit availed by the petitioner could be reversed on the ground that the registration of the seller was cancelled with retrospective effect, as held by this Court in W.P.No.9265 of 2013 dated 6.11.2014 (Infiniti Wholesale Limited etc., v. The Assistant Commissioner (CT), Koyambedu Assessment Circle), the respondent has wrongly proceeded against the petitioner. He has also submitted that when the subsequent notices dated 12.11.2014 were issued to the petitioner reiterating the same stand found in the earlier notice dated 19.9.2013, the petitioner once again re-submitted the reply in person, which was also not considered.

2. This Court is not able to agree with the contention made by the learned counsel for the petitioner that when the notices dated 12.11.2014 were issued, he had filed the reply. The reason is that the petitioner had filed the reply dated 4.2.2014 to the notice dated 19.9.2013 and not to the notice dated 12.11.2014. However, Mr.Manoharan Sundaram, learned Additional Government Pleader for the respondent, rightly bringing to the notice of this Court the consistent stand taken by this Court in W.P.No.9265 of 2013 dated 6.11.2014 referred to above, submitted that when the petitioner had already filed a detailed reply dated 4.2.2014 to the first notice dated 19.9.2013 taking a stand that the input tax credit availed by the petitioner should not have been reversed on the ground that the registration of the sellers were cancelled with retrospective effect, the respondent should have considered the case of the petitioner applying the law. In addition thereto, when notices were issued on 12.11.2014, a perusal of the same would show that the respondent has not proposed to levy penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, however, in the impugned orders, he has levied penalty under Section 27(4). Therefore, agreeing with the contention made by the learned counsel for the petitioner that there was no proposal made in the notices dated 12.11.2014 under Section 27(3) for levying penalty, finding that all of a sudden there has been a penalty under Section 27(4), accepting the case of the petitioner that the input tax credit availed by the petitioner should not have been reversed on the ground that the registration of the sellers have

been cancelled retrospectively, the impugned orders are set aside and the matters are remitted to the respondent to consider the case of the petitioner afresh after giving an opportunity of personal hearing to the petitioner. The writ petitions are disposed of accordingly. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ss

To

The Commercial Tax Officer
Tondiarpet Assessment Circle
Kummalamman Koil Street
Chennai 600 081

+1cc to Mr.R.Kumar, Advocate, S.R.No.27745
+1cc to the Special Government Pleader(Taxes), S.R.No.28125

W.P.Nos.11147 & 11148 of 2015

AD(CO)
CA(08/07/2015)