IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. No. 13026 of 2015
and
M.P. No. 1 of 2015

M/s.Shriram EPC Ltd.,
Rep. By its Chief Financial Officer .. Petitioner

-vs-

The Assistant Commissioner (CT),
Egmore Assessment Circle,
88, Mayor Ramanathan Road,
Chetpet, Chennai - 600 031. ... Respondent

PRAYER : This Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, to call for the records of the respondent in TIN/33640541243/2014-15 and quash the order dated 13.04.2015 passed therein and pass further orders.

For petitioner : Mr.R.L.Ramani, Senior Counsel for Mr.B.Raveendran

For Respondent : Mr.A.N.R.Jaya Pratap, Government Advocate (T)

O R D E R

This writ petition has been directed against the impugned order passed by the Assistant Commissioner (CT), Egmore Assessment Circle, in TIN number 33640541243/2014-2015 dt.13.04.2015.

2. Learned counsel appearing for the petitioner would submit that the petitioner being a registered dealer on the files of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, while filing their monthly returns under the said Act and have been promptly paying the taxes due thereon, received notice dated 12.03.2015 from the respondent for 2014-15, mentioning therein that scrutiny of the returns filed by the petitioner for the months of October and November 2014, revealed purchases by the petitioner from two

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assesses, namely, GRK Steels and Trinity Enterprises. Pursuant thereto, the respondent proposed to reverse the ITC claimed by the petitioner, on the quantum of tax paid by the petitioner to the registered dealers on purchases made from them, on the ground that the said registered dealers, namely, sellers had not revealed the sales made to the petitioners in the returns filed by them.

3. Learned senior counsel appearing for the petitioner further submitted that when the petitioner in the light of the ratio laid down by this Court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner reported in 60 VST 283, Madras, had paid taxes at the rate of 5% while purchasing the goods from them and had also enclosed the payment details to show that they have paid the taxes, the respondent department should have proceed against the suppliers for realization of the taxes. Without doing so and contrary to the settled legal position, erroneously the impugned order has been passed. Therefore, it has no reason to stand. Again while concluding his argument he would submit that though this fact was specifically brought to the notice of the Assessing authority, along with the copy of the aforesaid judgement, the respondent has committed the serious error by violating the above ratio. On this basis he further prayed for setting aside the same, with a further direction to the respondent to proceed against the suppliers for realization of the tax, if any.

4. Per contra, Mr.A.N.R.Jaya Prathap, learned Government Advocate appearing for the respondent would submit that now the Assessment year has been over, the impugned provisional assessment order may be set aside, with a direction to the respondent herein to pass a final assessment order for the said year and that would meet the ends of justice.

5. Again learned senior counsel appearing for the petitioner would submit that it would be a waste of time, as no such action has arisen in the matter and in any event the petitioner would be relying upon the ratio laid down in the aforementioned case, as he has fully complied with the conditions mentioned therein, by paying the taxes at the rate of 5% while purchasing the goods. In fact, that has also been taken note of, by the Assessing Officer.

6. This court, finding some merits on the submissions of learned senior counsel appearing for the petitioner and taking note of the fact that the petitioner having enclosed the payment details to show that they have paid 5% tax while purchasing the goods from them, in all fairness the respondent should have complied with the ratio laid down by this court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner reported in 60 VST 283, Madras. As it has not been done, the impugned order is set aside.

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7. In view of the above, the writ petition stands allowed and the respondent is directed to proceed against the seller, if so advised. Consequently, the connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

The Assistant Commissioner (CT),
Egmore Assessment Circle,
88, Mayor Ramanathan Road,
Chetpet, Chennai - 600 031.

+ 1 cc to Mr.B. Raveendran, Advocate SR.24030

+ 1 cc Government Pleader Sr.24163

KU(CO)
EU 15.05.2015

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