IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 30.04.2015

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. Nos. 13384 & 13385 of 2015
and
M.P.Nos.1 & 1 and 2 & 2 of 2015

M/s. V.R.Nachimuthu (CBE)
Rep. by its Managing Partner
-S.R.Vinothkumar .. Petitioner in both WPs

Vs.

The Assistant Commissioner(CT)
Brough Road Erode. ..Respondent in both WPs

PRAYER: These Writ Petitions have been filed under Article 226 of the Constitution of India to issue an order of Writ of Certiorari, to call for records on the file of the respondent in his impugned proceedings made in TIN: 33483002996/2010-11 & 2011-12 dated 03.04.2014 and quash the same as illegal and contrary to the scheme of the Act and pass further orders.

For petitioner : Mr. S. Rajasekar
in both WPs

For respondent : Mr.V. Haribabu
in both WPs Additional Government Pleader (T)

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C O M M O N O R D E R

There are two writ petitions filed M/s. V.R.Nachimuthu (CBE), represented by its Managing Partner S.R.Vinothkumar, taking a common ground to assail the impugned orders passed by the Assessment Officer on the ground that the respondent has failed to note that the petitioner in inconformity with Section 19(10) (a) of Tamil Nadu Value Added Tax Act of 2006 and Rule 10(2) thereof, have furnished all the documents in respect of each and every transactions of business carried out by them and claiming input tax credit in accordance with Section 19 (11) of the Act.

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2. Learned counsel appearing for the petitioner would submit that although all the details have been furnished while filing the returns for each and every month, instead of allowing the claim of Input Tax Credit, the respondent is repeatedly requesting the petitioner the same particulars and that indicates non- application of mind, that the particulars sought for by the respondent, having been furnished, have not been looked into. Secondly, it was argued that as per Section 19(10)(a) of TNVAT Act, it is for the petitioner to initially discharge the burden that the goods have been subjected to tax at an earlier stage. Accordingly, the petitioner has provided both the purchaser and suppliers' Registration numbers and original invoices. Having provided the aforesaid particulars, the initial burden has been discharged rightly by the petitioner and on production of the sale bills and other informations like Registration certificate number under TNVAT Act etc. of the selling dealer, ignoring all these aspects and only relying upon the alleged proposal of reversal of ITC said to have been made before the Enforcement Wing, wrongly came to a pre-matured conclusion, without applying his independent mind. Such approach having been deprecated by this court in a reported case of M/s.Amutha Metals Vs. Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai, reported in [2007] 9 VST 478 (Mad), this impugned order is liable to go. Relying on the said judgment, he also submitted that when the petitioner in all these cases have given detailed objections, accepting the notices issued by the Assessing Officer, it is for the Assessing Officer to examine the objections in detail and thereupon to pass a detailed order.

3. Mr. V. Haribabu, learned Additional Government Pleader (Taxes) representing the respondent takes notice and submitted that the infirmity as indicated in the light of the judgment referred to above, before this court, he has no answer to defend the impugned orders.

4. It is not in dispute that the petitioner has submitted all the necessary details, more particularly the information such as Registration Certificate Numbers under the TNVAT Act of the sellers and dealers. Therefore, when the petitioner has initially discharged his burden as per Section 19 (10)(a) of the TNVAT Act, showing that the goods have been subjected to tax at an earlier stage, the respondent ought to have considered the same. Although he is liable to apply his mind, without doing so, by merely resorting to the proposal of reversal of Input Tax Credit, over ruling all the objections, without giving any other reasons, has wrongly come to the conclusion. Therefore, it is necessary to extract the above ratio, covering the issue, which states as follows :

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"In these two cases, it is accepted by the assessing officer that for a pre-revision notice, the petitioner has given objections. The objections have to be considered by the assessing officer on their own merits. However, the assessing officer proceeded to the effect that :

> "... Their objections were examined in detail. The dealers should have placed all the facts before the inspecting officials. But they did not do so. They had given an admitted statement to the effect that the purchases were made from unregistered dealers and sold and that they were not in a position to produce purchase bills. In as much as they had admitted and even paid tax to some extent as per their statement now I find no reason to deviate from the proposals."

If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside..."

In the light of the above ratio, the impugned orders are set aside, as the Assessment Orders are passed without considering the objections and by merely taking note of the proposal of the Enforcement Officer.

5. Accordingly, the orders of Assessment are set aside and the Assessing Officer is directed to re-consider each

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one of the objections raised by the petitioner and give reason, except the reason that they have given in the statement before them with reference to the material made available and with reference to their accounts.

6. With the above directions, the matters are remanded back to the Assessment Officer to re-frame the assessment in accordance with law and both the writ petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. There is no order as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

avr

To

The Assistant Commissioner(CT)
Brough Road Erode.

2 ccs to Mrs.R. Hemalatha, advocate, SR. 24473

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