IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13746 of 2015

M/s Kotda Steel House
represented by its Proprietor
231 (Old No.113), Thambu Chetty Street
Parrys, Chennai 600 001 .. Petitioner

-vs-

1. The Commercial Tax Officer
Harbour Assessment Circle
Chennai-1

2. The Assistant Commissioner (CT)
Harbour Assessment Circle
Chennai-1 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in TIN/33770021590/2011-12 and quash the impugned order dated 23.2.2015 as passed contrary to the principles of natural justice and also contrary to the judgment of the Hon'ble Supreme Court in the case of the State of Maharashtra Vs Suresh Trading Company reported in 109 STC 439 and the Hon'ble Madras High Court in the case of M/s Jinsasan Distributors Vs Commercial Tax Officer(CT), Chintadripet Asst Circle reported in 59 VST 256, in the case of M/s Althaf Shoes (P) Ltd reported in 50 VST 179, in the case of M/s Sri Vinayaga Agencies reported in 60 VST 283, in the case of Aassan Global Trade in W.P.Nos.25996 to 25998/2014 and also in the case of M/s Infiniti Wholesale Limited in W.P.No.9265/2013.

For Petitioner :: Mr.P.Rajkumar
For Respondents :: Mr.V.Haribabu
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner, who is a stockist and dealer in ferrous and non-ferrous metals as well in industrial raw materials, challenging the impugned order, inter alia, that the respondents, who had cancelled the registration certificates of the selling dealers with retrospective effect, cannot reverse the input tax credit on the plea that the registration certificates have been cancelled with retrospective effect.

2. Adding further, the learned counsel for the petitioner also drew the attention of this Court to the notice dated 17.10.2014 bearing TIN:33770021590/2011-12 issued by the first respondent, wherein the penalty was proposed to be levied under Section 27(3) of the Tamil Nadu Value Added Tax Act, whereas the impugned order issued by the very same respondent in TIN:33770021590/2011-12 dated 23.2.2015 shows that penalty was proposed to be levied under Section 27(4) of the Tamil Nadu Value Added Tax Act. When there is a mismatch between the notice and the impugned order, the respondents have to be held guilty of non-application of mind, he pleaded.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader taking notice on behalf of the respondents.

4. Be that as it may, considering the first ground that the respondents are not entitled to reverse the input tax credit already availed of by the petitioner on the plea that the registration certificates of the selling dealers have been cancelled with retrospective effect, as held by the Supreme Court in the case of State of Maharashtra v. Suresh Trading Company, (1998) 109 STC 439 (SC) as well as by this Court in the case of Jinsasan Distributors v. Commercial Tax Officer, Chintadripet Assessment Circle, (2013) 59 VST 256 (Mad) and that the said issue is also being repeatedly decided in favour of the assessees like that of the petitioner vide order dated 20.4.2015 passed in W.P.Nos.11404 to 11407 of 2015 (M/s Bhairav Trading Company v. The Assistant Commissioner (CT), Broadway Assessment Circle) followed by several other orders, the impugned order has to go. Accordingly, the same is set aside and the writ petition stands allowed. The respondents are directed to reconsider the issue after giving an opportunity of personal hearing to the petitioner. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ss
To

1. The Commercial Tax Officer
Harbour Assessment Circle
Chennai-1

2. The Assistant Commissioner (CT)
Harbour Assessment Circle
Chennai-1.

1 cc to Mr. P.Rajkumar, Advocate Sr.No.26738
1 cc to Spl.Government Pleader.Sr.No.26975

W.P.No.13746 of 2015

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pmk.27.7.2015