IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition Nos.13798 to 13800 of 2015
M.P.Nos.1, 1 and 1 of 2015

Tvl.Asian Power Technologies,
rep., by its Proprietor,
Mrs.S.Jayashree ... Petitioner in all W.Ps.,

Vs.

The Assistant Commissioner (CT),
Gugai Assessment Circle,
Salem. ... Respondents in all W.Ps.,

Prayers : Writ Petitions filed under Article 226 of the Constitution of India praying for Writs of Certiorari, to call for the records, on the file of the respondent in TIN.33882723319/2011-12 (in respect of W.P.No.13798 of 2015), TIN.33882723319/2012-13 (in respect of W.P.No.13799 of 2015) and TIN.33882723319/2013-14 (in respect of W.P.No.13800 of 2015), dated 16.03.2015 and quash the same, as being contrary to the principles laid down by this Court in the judgment rendered in W.P.No.9265/2013, dated 06.11.2014 (Infinity Wholesale Ltd., v. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-107) and that of the principle laid down by this Court in the judgment rendered in W.P.Nos.9236 to 9242 of 2015, dated 31.03.2015 (M/s.Mahalakshmi Agencies, Salem v. Assistant Commissioner (CT), Shevapet Assessment Circle, Salem).

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.Manoharan Sundaram,
Additional Government Pleader (T)

O R D E R

Writ Petitions have been filed by M/s.Asian Power Technologies, represented by its Proprietor, Mrs.S.Jayashree, challenging the impugned proceedings of the Assistant Commissioner (CT), Gugai Assessment Circle, Salem, respondent herein, dated 06.11.2014, on the grounds, inter alia, that the respondent cannot come to a conclusion that the verification report, obtained from the departmental website, revealed that the petitioner has reported excess purchases, than the corresponding sales, reported by the sellers, in their returns and thereby, availed excess ITC.

2. Adding further, Mr.R.Senniappan, learned counsel for the petitioner would contend that the petitioner, who is the buyer, had rightly shown the higher purchase value and therefore, reversed the input tax credit in the difference, notwithstanding the fact that the seller, who has shown lesser value to the respective Assessing Officer are not paid tax to the department. According to him, this Court has repeatedly held that the Department has to proceed only against the seller for the defect and not against the innocent purchaser. This principle has been laid down by this Court in Althaf Shoes (P) Ltd., v. Assistant Commissioner reported in 2012 (50) VST 179 (Mad).

3. Concluding his submissions, learned counsel for the petitioner would submit that notice addressed to the petitioner, was not served and as a result, the petitioner was unable to give suitable reply. According to him, now the petitioner has got all the documents and hence, sought for one more opportunity to explain his case, along with all the documents at its end.

4. Opposing the prayer sought for, Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes), appearing for the respondent, would submit that it is not a case where the petitioner can allege violation of principles of natural justice, if any, whatsoever, on the part of the respondent, because, when the respondent has issued notice, proposing to determine the tax due on account of reversal of ITC, on 30.12.2014, with a direction to file its objections, if any, to the above proposals, within 15 days of receipt of the notice, admittedly, the petitioner, after receiving the notice on 31.01.2015, has wrongly chosen, not to file any objections, therefore, the respondent has rightly proposed to determine the tax due, under Section 27(2) of the TNVAT Act, 2006, on account of reversal of ITC, as mentioned in the impugned order.

5. Adding further, learned Additional Government Pleader for Taxes would request this Court not to entertain the prayer, since the petitioner has also admitted in the affidavit that one of its employees has received notice, which would go to show that service of notice was completed and therefore, there is no violation of principles of natural justice.

6. I fully agree with the submission of the learned Additional Government Pleader (Taxes) appearing for the respondent.

7. However, this Court in Althaf Shoes (P) Ltd., v. Assistant Commissioner reported in 2012 (50) VST 179 (Mad), has held that the Department has to proceed against the seller for the defect and not against the innocent purchaser. In the present case, it appears that

the petitioner is a buyer, who had shown higher purchase value. Reading of the impugned order shows that the selling dealer has shown lesser value to the respective assessing officer. Therefore, this Court is inclined to give one more final opportunity to the petitioner to put forth its case, with the available documents.

8. In view of the above, the impugned order shall be directed to be treated as notice. Accordingly, this Court remands the matter back to the respondent, for fresh consideration and the impugned order shall be treated as notice and the petitioner shall submit a detailed reply, to the respondent, within a period of two weeks, from the date of receipt of a copy of this order. On receipt of the reply, the respondent shall give the petitioner, a personal hearing and thereafter, pass appropriate orders, on merits.

In the result, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

skm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Gugai Assessment Circle,
Salem.

+1cc to Mr.R. Senniappan, Advocate, S.R.No.27982

+1cc to the Government Pleader, S.R.No.28126

EV(CO)
EU(22/06/2015)