IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.13846 of 2015
and M.P.Nos.1 & 2 of 2015

M/s.Bright Point India Pvt. Ltd
Rep by its Authorised Signatory
J.Vikash Khannah
Now at C/o M/s Ingram Micro
India Limited,
No.9 Noombal Village
Pallikuppam Thiruverkadu Chennai 77 [Petitioner]

Vs

1 The Assistant Commissioner (CT)
Tambaram I Assessment Circle
No.19-A Sivashanmugham Salai
Tambaram Chennai 45

2 The Appellate Deputy
Commissioner (CT), Kancheepuram

3 The Joint Commissioner (CT)
Enforcement Chennai (South)
PAPJM Buildings Greams Road Chennai 9
[Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records of the 1st respondent in TIN/33521344565/2011-12 quash the impugned proceedings dt 27.6.2014 and further direct the 1st respondent to pass order in accordance with provisions of the Tamil Nadu Value Added Tax Act 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.V.Haribabu, AGP (Taxes)

O R D E R

Heard the learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petition itself is taken up for hearing at the admission stage itself.

2. This writ petition has been filed by M/s.Bright Point India Pvt. Ltd., represented by its Authorised Signatory J.Vikash Khannah, challenging the impugned proceedings of the 1st respondent in TIN/33521344565/2011-12 dated 27.6.2014 and further to direct the 1st respondent to pass an order in accordance with the provisions of the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as TNVAT Act).

3. The learned counsel for the petitioner would submit that the petitioner is a registered dealer on the files of the 1st respondent under the provisions of the TNVAT Act and carrying on the business in cell phones and accessories. According to him, earlier the business was carried on in the name and style of M/s Bright Point India Pvt. Limited, which, due to change in management, became to be known as M/s Ingram Micro India Limited. Adding further, learned counsel for the petitioner submitted that on 02.05.2012, an inspection was conducted by the Commercial Tax Officer, Group II, Enforcement Chennai (South), Chennai, under the jurisdiction of the 3rd respondent, wherein, the officials recorded statement, in and by which the petitioner categorically denied the ineligibility of input tax credit and submitted that all the records would be produced at the time of assessment. Though the original assessments were completed on 31.10.2012, accepting the returns by the 1st respondent, u/s 22(2) of TNVAT Act, the 1st respondent re-opened the assessment u/s 27 of TNVAT Act to make a revision of assessment as if there was an escapement of assessable taxable turnover relying on D-3 report forwarded by the 3rd respondent. A revision notice dated 28.03.2014 was issued for which a detailed reply was given by the petitioner on 19.05.2014. However, the 1st respondent rejected the same by passing assessment order dated 27.06.2014. Aggrieved over the same, the petitioner filed an appeal before the 2nd respondent on 28.08.2014, by paying 25% disputed tax also. However, the appeal papers were returned by the 2nd respondent as barred by limitation. Hence, the petitioner is before this Court. The learned counsel for the petitioner submitted that the petitioner is challenging the assessment order dated 27.06.2014 on the ground of violation of principles of natural justice for which this Court can intervene, under Article 226 of the Constitution of India.

3. Admittedly, the petitioner filed an appeal challenging the assessment order before the authority concerned, but, beyond the limitation period of 60 days. The mandatory pre-deposit amount was also paid. Stating that the appeal is barred by limitation, the same was returned and hence, without any other remedy, the petitioner challenges the impugned order of assessment before this Court.

4. The one and only ground to be considered is violation of principles of natural justice. The authority, without affording sufficient opportunity to the petitioner, passed the impugned order, despite specific request made by the petitioner on those lines. Originally, the assessment was completed on 31.10.2012, accepting the returns filed by the petitioner under Section 22(2) of the TNVAT Act. The said assessment was sought to be re-opened by the authority under Section 27 of the TNVAT Act, for escapement of assessment on the basis of the report filed by the Enforcement Wing authorities, which resulted in disallowance of sales return as well as reversal of ITC, which according to the learned counsel for the petitioner is not justifiable and the petitioner is entitled for the same. Apparently, without providing a reasonable opportunity to the petitioner of being heard the impugned order came to be passed. On this score itself, the impugned order is liable to be set aside.

5. In the result, the impugned order passed by the 1st respondent in TIN/33521344565/2011-12 dated 27.6.2014 is set aside and the matter is remitted back to the assessing authority for fresh consideration. The petitioner shall file necessary objections along with all the documentary evidences, within a period of two weeks from the date of receipt of a copy of this order and on such filing, the authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter, after affording an opportunity of personal hearing to the petitioner. If the petitioner fails to comply any of the directions, it is open to the respondent to pass appropriate orders.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

1 The Assistant Commissioner (CT)
Tambaram I Assessment Circle
No.19-A Sivashanmugham Salai
Tambaram Chennai 45

2 The Appellate Deputy
Commissioner (CT), Kancheepuram

3 The Joint Commissioner (CT)
Enforcement Chennai (South)
PAPJM Buildings Greams Road Chennai 9

+1 cc to the Special Government Pleader sr.40696
+1 cc to Mr.V.Sundaresan, Advocate sr.40895

W.P.No.13846 of 2015

rj(co)
aa19/08/2015