IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15466 of 2015
And
M.P.No.1 of 2015

Lakshmi Traders
Rep. by its Proprietor ...Petitioner

Vs.

The Commercial Tax Officer
Tondiarpet Assessment Circle,
No.19 & 20, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081. ...Respondent

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33261200178 / 2013-14 and quash the order dated 17.04.2015 as the same is prima-facie contrary to the settled law laid down by the Supreme Court and this Hon'ble Court, contrary to the provisions of the TNVAT Act, 2006 and in gross violation of principles of natural justice, with a direction to the respondent to re-do the assessment in accordance with law by providing an opportunity to the petitioner.

For Petitioner : Mr.MD.Ghafoor Ur Rahman

For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader (T)

ORDER

This writ petition has been filed challenging the impugned order passed by the respondent in TIN No.33261200178 / 2013-14 dated 17.04.2015 on the sole ground that the same is running contrary to the settled law laid down by the Hon'ble Apex Court as well as this Court and also contrary to the provisions of the TNVAT Act, 2006.

2.In support of his submission, the learned counsel appearing for the petitioner would submit that the petitioner being a trader in iron and steel scraps registered with the respondent under the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956, for the assessment year 2013-14, rightly reported the total and taxable turnover of Rs.24,88,69,412/-. Accordingly remitted the taxes due thereon in the monthly returns filed in Form-I by furnishing the details of purchase and sales in the Annexure-I and II respectively and the same have also been assessed based on the returns as provided under Section 22(2) of the TNVAT Act.

3.Whileso, the respondent issued a revision notice in TIN No. 33261200178 / 2011-12 dated 12.11.2014 informing that the petitioner has effected local purchases in the month of July, 2013 to the tune of Rs.24,02,400/- from M/s.White Global Enterprises an assessee of the Sriperumbudur Assessment Circle whose registration has been cancelled from 16.09.2008. In view of that, the respondent has indicated in the notice that the petitioner is also not entitled to the ITC for a sum of Rs.1,20,120/- since purchase is made by the petitioner and the ITC so availed subsequent to such cancellation has to be reversed and finally, the respondent confirmed the reversal of ITC and also imposed penalty of Rs.60,060/- by the impugned proceedings.

4.Since the above approach is running contrary to the well settled legal position decided by this Court in various orders more particularly in the reasoned order passed by this Court in W.P.Nos.11404 to 11407 of 2015 dated 20.04.2015 clearly holding that the cancellation of registration certificate of the selling dealer with retrospective effect will entitle the Department to reverse the ITC already availed of by the assessee consequent to assessment orders passed by competent authority based on records, the impugned order is liable to be quashed.

5.Adding further, he would submit that the petitioner had unfortunately fallen ill at the relevant time when he received the impugned notice dated 17.04.2015. As he was seriously taking treatment for various ailment, he was physically prevented from approaching the respondent. As he was not able to appear before the respondent, the exparte order has been passed. While passing the exparte order, it is the contention of the petitioner that the law laid down by the Hon'ble Apex Court as well as this Court should have been applied. In the present case, as the respondent did not do so, the impugned order is liable to be set aside.

6.Heard the learned counsel appearing for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes) who takes notice for the respondent.

7.The only reply given by Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes) in support of the writ petition shows that it is the obligation on the part of the petitioner to bring to the notice of the assessing officer about the settled legal position which has not been done, resultantly, the impugned order has been passed.

8.No doubt this Court in W.P.Nos.11404 to 11407 of 2015 in the case of M/s.Bhairav Trading Company, represented by its Proprietor Vs. The Assistant Commissioner (CT), Broadway Assessment Circle, Chennai by its order dated 20.04.2015 decided the issue holding that the cancellation of registration certificate of the selling dealers with retrospective effect will not entitle the Department to reverse the ITC already availed of by the assesses consequent to the assessment orders passed by competent authority based on records. That was not being properly brought to the notice of the respondent, the impugned order has been passed. Therefore, now interference is called for by this Court.

9.This Court fully disagrees with the contentions made by the learned counsel appearing for the respondent. As reiterated by the ratio laid down by this Court which has been given as under:

> "4.......................
> 9.The question now to be considered is whether the cancellation of registration certificate of the selling dealers with retrospective effect will entitle the Department to reverse the ITC already availed of by the assesses consequent to the assessment orders passed by competent authority based on records......
>
> An almost identical issue was considered by the Supreme Court in State of Maharashtra v. Suresh Trading Company (1998) 109 STC 439 (SC)...
>
> The Supreme Court, while dismissing the appeals filed by the Revenue, held as follows: (page 441 in 109 STC):
> ...
>
> In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling

dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of registration certification when the registration was current. ...

In the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input-tax credit on the plea that registration certificates have been cancelled with retrospective effect cannot be countenanced."

5.In view of the above decision, the respondent cannot deny the benefit of input-tax credit to the petitioner as it is contrary to the law laid down by the Apex Court in the above said judgment. Therefore, the writ petitions stand allowed in the light of the ratio laid down by this court as well as the Honourable Supreme Court in the decision cited above. No costs. The connected miscellaneous petitions are closed."

10.It is not quite just and lawful to the respondent to pass an order running contrary to the above settled legal position. Therefore, the issue raised in the writ petition definitely warrants interference, hence, the writ petition stands allowed and the impugned order is set aside on the ground that the law laid down by this Court has not been properly followed by the assessing officer. Be that as it may, as the exparte order has been passed, the same is set aside and the matter is remanded to the assessing officer to redo the exercise within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Tondiarpet Assessment Circle,
No.19 & 20, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081.

1 CC to Mr.MD.Ghafoor Ur Rahman, Advocate SR.No. 25857

1 CC to the Spl.Government Pleader, SR.No. 26197

W.P.No.15466 of 2015
And
M.P.No.1 of 2015

SV (CO)
PSI (24.07.2015)