IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.15486 of 2015
and M.P.No.1 of 2015

M/s.VRM Agencies [Petitioner]
Rep. by its Prop.P.Arun
9C Dharmakartha Paramasiva Mudali Street
Thottapalayam.
Katpadi Road Vellore-4.

Vs

The Deputy Commercial Tax Officer
Vellore (North) Circle
5 Barathidasan Salai Fort Round
Vellore. [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the respondent in his proceedings in TIN 33984203290/ 2013-2014 dated 13.3.2015 and quash the same as illegal.

For petitioner : Mr.S.Ramanathan
For respondent : Mr.S.Kanmani Annamalai, AGP (T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who takes notice for the respondent.

2. This writ petition is directed against the order of the respondent dated 13.03.2015.

3.1 The learned counsel for the petitioner would submit that the impugned order is challenged on the ground that the respondent was not correct in levying the tax for mismatching, when the petitioner has filed copies of the purchase bills in proof for payment of tax and he has not even verified the same. The other ground on which the impugned order is challenged is that the respondent has not considered the reply dated 19.02.2015 filed by the petitioner, to the notice dated 08.01.2015.

3.2 The learned counsel for the petitioner would further submit that when the petitioner has specifically pleaded in the aforesaid reply that he has enclosed the dealers details viz., the copies of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the purchase bills in proof of having paid the tax, the respondent ought to have passed a speaking order, as to how the reply filed by the petitioner was not acceptable. Since the respondent has passed a non-speaking order, it is against the circular of the Commissioner of Commercial Taxes. Therefore, he was not correct in levying penalty at 100% of the Input Tax Credit.

3.3 The learned counsel for the petitioner also drawn the attention of this Court to the reply dated 19.02.2015 filed by the petitioner to the notice dated 08.01.2015. He further submitted that no doubt the respondent has referred to the reply in the impugned order, but he has not given any single reason as to how the reply filed by the petitioner has failed to clear the doubts. Therefore, on the ground of passing a non-speaking order also, the impugned order has to go.

4. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) would submit that the reply given by the petitioner dated 19.02.2015 being so brief, the respondent had applied his mind and passed the impugned order. Therefore, no interference is called for.

5. Considering the submissions made by the learned counsel on either side, this Court is unable to find any merit in the submission of the learned Additional Government Pleader (Taxes). The reason is, admittedly, in the case on hand, the petitioner was issued with notice dated 08.01.2015 informing that he had claimed wrong availment of ITC instead of eligible amount of ITC as per the enclosure in the dealer details and hence he was asked to pay the difference amount of Rs.3,02,939/- within 15 days from the date of receipt of the said notice. In the said notice, the respondent has also intimated the proposed penalty at 100% for the wrong availment of IPC. When the petitioner denied the above allegation and has given a reply dated 19.02.2015, the respondent, while passing the impugned order under Section 84 of the Act, ought to have passed a reasoned and a speaking order. As the stand taken by the petitioner in the reply has not been reflected in the impugned order, it goes without saying that the respondent has not applied his mind. Therefore, the impugned order is liable to be set aside.

6. Accordingly, the impugned order is set aside and the writ petition is allowed. The matter is remanded to the respondent for fresh consideration of the case of the petitioner. It is needless to mention that the respondent shall give personal hearing to the petitioner before passing fresh orders on the basis of the reply filed by the petitioner dated 19.02.2015.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer
Vellore (North) Circle
5 Barathidasan Salai Fort Round
Vellore.

+1 cc to Mr.S.Ramanathan, Advocate,SR.26355

+1 cc to Spl.Government Pleader,SR.26471.

Ev(co)
krd 30/6

W.P.No.15486 of 2015

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/