IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15955 of 2015
And
M.P.Nos.1 & 2 of 2015

M/s. SS Manufacturing P. Ltd. [Petitioner]
No.127 Mettupalayam Main Road
Panrutti Village Sriperumpudur Taluk
Kancheepuram-631604.

Vs

The Assistant Commissioner(CT)
Oragadam Assessment Circle
No.3/177 2nd Floor
Bazaar Street
Hajiya Nagar
Padappai-601301 [Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records relating to the Order passed by the Respondent against the Petitioner in TIN 33461663825/2014-15 dated 01.04.2015 and quash the same and consequently direct the Respondent to make a fresh assessment in compliance with S.19(11) of the Tamil Nadu Value Added Tax Act 2006 read with Rule 10(11) of the TNVAT Rules 2007.

For Petitioner : Mr.R.Prabhakaran

For Respondent : Mr.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned Counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who takes notice for respondent and with their consent, the main writ petition itself is taken up for disposal at the stage of admission itself.

2. This writ petition has been filed by M/s. SS Manufacturing P. Ltd., challenging the impugned order passed by the Assistant Commissioner(CT), Oragadam Assessment Circle, the respondent herein dated 01.04.2015 and consequently to direct the respondent to make a fresh assessment in compliance with Section 19(11) of the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as the TANVAT Act) read with Rule 10(11) of the TNVAT Rules 2007.

3.1 The learned counsel for the petitioner would submit that the petitioner is a subsidiary Company of Samsong Industries located at South Korea. The petitioner Company is having its registered office at No.27, Devadi Street, Mylapore, Chennai and having its manufacturing unit at No.127, Mettupalayam Main Road, Panrutti Villabe, Sriperumpudur Taluk, Kancheepuram. Adding further, the learned counsel for the petitioner would submit that the petitioner Company is manufacturing key automobile parts and accessories, belt conveyors, car seat belt, safety belts and air bags from 2007 and providing timely services and technological expertise. While so, they are filing monthly returns under the TANVAT Act along with payment of tax promptly without any default. When that be so, a notice dated d16.03.2015 was issued by the respondent based on the reassessment audit conducted by the respondent, alleging short payment of tax for the assessment year 2013-14. As per the notice dated 16.03.2015, it has been alleged that the petitioner is liable to pay 100% penalty under Section 27(4) of the TANVAT Act for wrong and belated claim of ITC on local purchase for May 2014 and during the financial year 2014-15 instead of the financial year 2013-14. On receipt of the notice, the petitioner submitted a detailed reply on 31.03.2015, mentioning clearly the inadvertent mistake committed by the petitioner.

3.2 The learned counsel for the petitioner, explaining further the inadvertent mistake committed by the office of the petitioner clarified that the purchase invoices were dated 02.05.2014, however, the Annexure I mentions ITC on purchases, the purchase invoice dated as 05.02.2014. Adding further, he would submit that this has been properly brought to the notice of the respondent in the reply along with sufficient supporting documents, but, that has not been considered.

3.3. That apart, according to the learned counsel for the petitioner, as per proviso to Section 27(2) of the TANVAT Act, a reasonable opportunity to show cause against the impugned order should have been granted to the petitioner and had there been a personal hearing extended to the petitioner, he would have explained the doubts raised by the respondent in the notice.

3.4 Besides, the learned counsel for the petitioner would submit that though in the written reply to the notice it was clearly mentioned that the purchase invoice date was not 05.02.2014 and it was only 02.05.2014, for the mistake committed by the respondent in not providing reasonable opportunity, the petitioner has been put to great prejudice.

Therefore, the learned counsel for the petitioner sought interference of this Court with the impugned order.

4. Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes) opposing the above argument, contended that even if the reply of the petitioner and the argument advanced by the learned counsel for the petitioner are accepted, still, the petitioner has got a remedy to go before the Assessing Officer, within six months from 02.04.2015 and therefore, no interference is called for.

5. This Court, finding that the explanation offered by the petitioner in the reply having been supported with documents that the purchase notice is dated 02.05.2014, but not 05.02.2014, is of the view that the respondent could have afforded a reasonable opportunity to the petitioner so that the petitioner could have made use of the same to explain clearly about the inadvertent mistake committed in the office of the petitioner. Be that as it may, as the petitioner has got a remedy to go before the same Assessing Officer, as rightly contended by the learned Additional Government Pleader (Taxes) appearing for the respondent, the matter is liable to be remanded to the respondent.

6. In the result, the writ petition is disposed of by granting liberty to the petitioner to file an application under Section 84 of the TANVAT Act and on such an application being filed, the respondent is directed to pass orders on the same on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. Till such time, the impugned order shall be kept in abeyance. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner(CT)
Oragadam Assessment Circle
No.3/177 2nd Floor
Bazaar Street
Hajiya Nagar
Padappai-601301

1 CC to Mr.R.Prabhakaran, Advocate SR.No. 27146

1 CC to the Spl.Government Pleader (T), SR.No. 27178

W.P.No.15955 of 2015

UG (CO)
PSI (19.06.2015)