IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2015

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THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.16840 of 2015
and
M.P.No.1 of 2015

M/s.Rama Metals rep. By its Proprietor ...Petitioner

Vs.

The Assistant Commissioner (CT),
Broadway Assessment Circle,
199, Thambu Chetty Street,
Chennai - 1. ...Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the impugned proceedings of the respondent in TIN/33590060877/2012-2013 and quash the impugned order dated 14.05.2015 as passed contrary to the principles of natural justice and also contrary to the judgment of the Hon'ble Supreme Court in the case of the State of Maharashtra Vs. Suresh Trading Company reported in 109 STC 439 and this Court in the case of M/s.Jinsasan Distributors Vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle reported in 59 VST 256 in the case of M/s.Althaf Shoes (P) Ltd., reported in 50 VST 179 in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283, in the case of Aassan Global Trade in W.P.Nos.25996 to 25998 of 2014 and also in the case of M/s.Infiniti Wholesale Limited in W.P.No.9265 of 2013.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader (T)

ORDER

This writ petition has been filed by M/s.Rama Metals, challenging the impugned order issued by the Assistant Commissioner (CT), Broadway Assessment Circle, Chennai in TIN No.33590060877/2012-2013 dated 14.05.2015, in and by which, the reversal of ITC has been made against the petitioner on purchase from RC cancelled dealers and non-active dealers. That apart, penalty was also imposed under Section 27(4) of the TNVAT Act.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3.The learned counsel for the petitioner would submit that the petitioner company is a dealer in ferrous and non-ferrous goods and assessee in the books of Assistant Commissioner (CT), Broadway Assessment Circle. The petitioner has filed monthly returns under TNVAT Act for the assessment year 2012-2013. In the meanwhile, the enforcement wing officials inspected the place of business on 21.04.2014 and noticed that the petitioner has effected purchase of goods from certain registered dealers whose registration certificates have been cancelled. Subsequently, the respondent issued notice dated 23.01.2015, to which, a detailed reply was given by the petitioner on 12.02.2015 taking a specific stand that merely on the ground of cancellation of registration certificates of the sellers with retrospective effect, the respondent cannot deny the benefit of ITC to the petitioner as it is contrary to the law laid down by the Apex Court in State of Maharashtra Vs. Suresh Trading Company reported in 109 STC 439.

4.Adding further, the learned counsel for the petitioner would submit that in a similar matter in W.P.Nos.11404 to 11407 of 2015, accepting the similar contention, this Court allowed the writ petitions on 20.04.2015 and directed the respondent therein not to deny the benefit of ITC to the petitioner therein as it is contrary to the law laid down by the Apex Court in the aforesaid judgment. Similarly, in the present case also, it was the claim of the petitioner that at the time of purchase, they filed returns and claimed ITC. However, even before the closure of the assessment year 2012-2013, the assessing authority has wrongly passed the original assessment order.

5.No doubt, the notice was received by the petitioner on 23.01.2015, for which, a detailed reply was also given, stating that no ITC should be reversed in the light of the aforesaid judgment of the Apex Court and no final assessment order should be passed before the closure of the assessment year. However, both the grounds raised by the petitioner were ignored.

6.Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent is unable to defend the impugned order as the same has been passed even before the closure of the assessment year and on the basis of the cancellation of the registration certificates of the sellers, the petitioner's ITC has been reversed.

7.It has been repeatedly held by this Court that there is no need to pass final assessment order before the closure of the assessment year. Secondly, the cancellation of the registration certificates of the selling dealers with retrospective effect will not entitle the Department to reverse the ITC already availed by the assessee consequent to the assessment order passed by the competent authority. Therefore, when the legal position on these two points has been settled once and for all, the impugned order is liable to be set aside. Accordingly, the impugned order is set aside and the matter is remanded back to the respondent for fresh consideration. The assessing officer is directed to pass appropriate final assessment order.

8.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Broadway Assessment Circle,
199, Thambu Chetty Street,
Chennai - 1.

1 CC to Mr.P.Rajkumar, Advocate SR.No. 29149

1 CC to the Spl. Government Pleader (Taxes), SR.No. 29192

W.P.No.16840 of 2015

KU (CO)
PSI (19.09.2015)