IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17441 of 2015
and
M.P. No.1of 2015

M.K.Aromatics (M.K.Aromatics Ltd.) [Petitioner]
Represented by its Managing Director
Mahesh Merchant
43-47 Sipcot Industrial Estate
Alandur Chennai-603110.

Vs

The Assistant Commissioner(CT)
Thirukazhukundram Assessment Circle
42 Wahab Nagar Thirukazhukundram.
[Respondent]

PRAYER : The Writ petition is filed under Article 226 of the Constitution of India praying for a Writ of certiorari calling for the records on the files of the Respondent herein in his TIN/ 33451604709/2013-14 dated 18.02.2015 and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition is taken up for final disposal.

2. This writ petition has been filed by M.K.Aromatics (M.K.Aromatics Ltd.) represented by its Managing Director Mahesh Merchant, challenging the impugned proceedings issued by the The Assistant Commissioner(CT), Thirukazhukundram Assessment Circle in TIN/ 33451604709/2013-14 dated 18.02.2015.

3.1 Learned counsel for the petitioner would submit the grounds on which the impugned order dated 18.02.2015 is that the impugned order is erroneous and it is also against the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as the TANVAT Act), since the original notice dated 03.11.2014 having been issued only with regard to reversal of ITC and levy of penalty under Section 27(4) of the TANVAT Act and no proposal whatsoever has been made with regard to levy the rate of tax at 14.5% on the entire taxable turnover.

3.2 Adding further, learned counsel for the petitioner submits that when there was no reason stated in the original notice dated 03.11.2014 for levying higher rate of tax at 14.5% on the entire taxable turnover, while in the deemed assessment, the tax was determined only at 5%, the impugned order levying tax at 14.5% is liable to be set aside.

3.3 Explaining further, learned counsel for the petitioner would submit that no doubt the petitioner received the notice dated 03.11.2014 with regard to reversal of ITC to the tune of Rs.4015/- and also levy of penalty under Section 27(4) of the Act at Rs.2007/- and hence the petitioner was agreeable for the same. Therefore, according to him, even if there is no reply filed by the petitioner, the Assistant Commissioner, the respondent herein could have confirmed the proposal only with regard to reversal of ITC and levy of penalty, but, moving beyond the scope of the notice, the respondent, has committed a major infirmity by levying the rate of tax at 14.5% on the entire taxable turnover i.e, Rs.54,89,494/-, without there being any notice whatsoever.

Based on the above submissions, the learned counsel for the petitioner has sought for setting aside of the impugned order.

4. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) is unable to support the impugned order for the reason that a mere reading of the original notice dated 03.11.2014 confines the issue with regard to reversal of ITC as per Section 19 (7) of the TANVAT Act and levy of penalty as per Section 27(4) of the TANVAT Act. Consequently, it is crystal clear that there was no proposal in the said notice to levy the rate of tax at 14.5% as contended by the learned counsel for the petitioner. Thus, when the petitioner has not filed any reply with respect to the notice dated 03.11.2014, the respondent, without confining only to reversal of ITC and levy of penalty, has gone one step further and levied rate of tax at 14.5%, without there being any notice. Therefore, this Court finds merits in the contention of the learned counsel for the petitioner with regard to the levy of rate of tax at 14.5% i.e., Rs.54,89,494/-, as the petitioner was not put on notice with regard to fixation of rate of tax at 14.5%.

5. In view of the above, the impugned order dated 18.02.2015 is set aside with respect to levy of rate of tax at 14.5% alone. However, the petitioner is directed to pay the penalty imposed as well as the amount with respect to reversal of tax.

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

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

The Assistant Commissioner(CT)
Thirukazhukundram Assessment Circle
42 Wahab Nagar Thirukazhukundram.

1 cc to Spl.government Pleader (TAxes), Sr. 29932
1 cc to Mr.N.Inbarajan, Advocate, Sr. 29838

TEJ (CO)
kk 30/6