IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19025 of 2015 &
M.P.Nos.1 & 2 of 2015

M/s.Bombay Light House,
Rep. By is Partner - K.Umesh,
No.7, Gandhi Road,
Vellore - 632 004,
Vellore District .. Petitioner

v.

The Commercial Tax Officer,
Vellore (Rural),
Vellore. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari, to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33254321886/2012-13, dated 26.05.2015 quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Ms.R.Hemalatha

For Respondents : Mr.S.Manoharan Sundaram
Addl. Govt. Pleader (Taxes)

O R D E R

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.S.Manohar Sundaram, learned Additional Government Pleader (Taxes).

2. This writ petition has been filed by M/s.Bombay Light House, represented by its Partner viz., Mr.K.Umesh, challenging the impugned proceedings of the 1st respondent in TIN No.33254321886/2012-13, dated 26.05.2015 and to quash the same as illegal and contrary to the scheme of the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as TNVAT Act).

3. The learned counsel for the petitioner submitted that the petitioner is a dealer in Electrical & Electronics items and registered on the file of the respondent under the provisions of the TNVAT Act. For the year 2012-13, the petitioner hasd filed Form

I returns reporting a total and taxable turnover of Rs.5,83,08,544/- and claimed ITC for Rs.69,00,337/-. The learned counsel further submitted that the respondent has issued a notice stating that few purchases were not reported by the seller and in the absence of sales details of other end, the ITC claimed and adjusted towards output tax become ineligible and hence, the respondent has proposed to revise the assessment for the year 2012-13. In response to the said notice, the petitioner filed objections stating that the suppliers have issued valid tax invoice and the copies of the same has been filed. Therefore, the claim of ITC is in order on the basis of original tax invoice issued by the suppliers as provided under section 19(10)(c) of the TNVAT Act. However, the respondent had passed the impugned order on 26.05.2015, without considering the said objections filed. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that on receipt of the notice, the petitioner filed preliminary reply enclosing xerox copies of the invoices with an undertaking to produce the originals. Thereafter, nothing moved on and the impugned order, against the principles of natural justice came to be passed on 26.05.2015. Hence, the counsel sought for setting aside of the impugned order of assessment.

5. Though various grounds have been raised on merits against the impugned order, the main ground of attack in this case is non consideration of the preliminary reply enclosing xerox copies of the invoices with an undertaking to produce the originals as and when required. The petitioner to show the bona fide, filed xerox copies of the invoices and awaited further communication from the respondent. But, without giving any opportunity to the petitioner for producing the originals, the impugned order came to be passed, which is unsustainable. Hence, on this score alone, the impugned order is liable to be set aside.

6. In the result, the impugned order passed by the respondent in TIN No.33254321886/2012-13, dated 26.05.2015 is set aside and the matter is remitted back to the assessing authority for fresh consideration. The petitioner shall file the original invoices, within a period of two weeks from the date of receipt of a copy of this order and on such filing, the authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter, after affording an opportunity of personal hearing to the petitioner. If the petitioner fails to comply any of the directions, it is open to the respondent to pass appropriate orders.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Rj

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Vellore (Rural),
Vellore.

+ 1 cc to M/s.R.Hemalatha, Advocate SR 43623

+ 1 cc to Spl.Govt.Pleader (Taxes) SR 43608

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