IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.21683 of 2015
and
M.P.No.1 of 2015

M/s. Vistra Iron and Steel Enterprises ... Petitioner
Rep. by its Managing Partner
Mr. Sheik Mohammed Nizar
No.42-B Canal Road
Kilpauk Chennai-10.

Vs

The Assistant Commissioner(CT)
Kilpauk Assessment Circle
No.57 59 61 & 63 Dowlath Towers
Taylors Road Chennai-10. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the respondent in TIN: 33986259302/2014-15 quash the impugned order dated 23/06/15.

For petitioner : Mr.V.Sundareswaran

For respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Special Government Pleader, who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed by M/s. Vistra Iron and Steel Enterprises, represented by its Managing Partner Mr. Sheik

Mohammed Nizar, challenging the impugned order passed by the Assistant Commissioner(CT), Kilpauk Assessment Circle in TIN: 33986259302/2014-15 dated 23.06.2015.

3.1 The learned counsel appearing for the petitioner assailing the impugned order would submit that the respondent is not empowered to pass any piecemeal order of assessment for the month of December 2014 to March 2015 on 23.06.2015, after the expiry of the assessment year, as per the ratio laid down by this Court in the case reported in 70 STC 421.

3.2 Adding further, learned counsel for the petitioner would submit that the respondent again committed serious error as he failed to see that as per Section 19(1) read with Rule 10(2) of the Act, the Input Tax Credit can be availed on production of Invoice copy of the seller.

4. No doubt these arguments though attracts the attention of this Court, the factual aspect that stands in the way of interfering with the impugned order is some thing different. When the Assessing Officer in the impugned order has specifically made it clear that on verification of transport documents it was clear that the goods mentioned are for delivery only from Karnataka State to Tvl.Annam Steels Pvt. Ltd., and not related to Tvl.Vistara Iron and Steel Enterprises and no movements of goods were proved, nowhere the petitioner has given any explanation to say that the finding given by the Assessing Officer is wrong in this regard. That apart, since the petitioner has got an alternative effective remedy either by filing appeal or revision, this writ petition is dismissed as the same cannot be entertained.

5. Learned counsel appearing for the petitioner has taken an interesting stand at this juncture that this Court under Article 226 of the Constitution of India should interfere, since the petitioner is not in a position to decide as to whether to take up the matter either to the appellate authority or the revisional authority.

6. This Court makes it clear that if the petitioner prefers an appeal and if he succeeds, question of challenging the penalty may not arise. However, it is for the petitioner to decide which course of action to be taken up by them.

7. At this juncture, learned counsel for the petitioner would submit that the petitioner would opt for going before the revisional authority.

8. In view of the same, two weeks' time from the date of receipt of a copy of this order is granted to the petitioner for filing revision petition under Section 54 of the Act.

No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rg

To

The Assistant Commissioner(CT)
Kilpauk Assessment Circle
No.57 59 61 & 63 Dowlath Towers
Taylors Road Chennai-10.

Copy To

The Section Officer,
Current Section,
High Court, Madras.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.37605
+1cc to the Special Government Pleader(Taxes), S.R.No.36847

W.P.No.21683 of 2015

MSM(CO)
CA(03/08/2015)