IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.24721/2015
MP.No.1 and 2/2015

M/s. Sivashankar & Co by its Proprietor
S.Karunanidhi, Kollampalayam, Erode
Petitioner

Vs

The Assistant Commissioner(CT)
Erode Rural Assessment Circle
Erode. Respondent

Prayer:- This Writ Petition is 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 TIN No.33692906317/13-14, dated 25.05.2015 and quash the same.

For Petitioner : Ms.R.Hemalatha
For Respondent : Mr.S.Kanmani Annamalai, AGP(T)

ORDER

By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal.

2. The case of the Petitioner is that it is a registered dealer, having TIN No.33692906317 and reported a total and taxable turn over of Rs.15,96,42,963/- in the monthly Form I returns filed for the year 2013-14 and claimed ITC (input tax credit) of Rs.79,90,385/-, by furnishing all the purchase details. The Respondent, by notice dated 27.10.2014 under Section 27(2) of the TNVAT Act, 2006, in order to verify the genuineness of the claim, sought for certain records, viz. original purchase bills, details of movements of goods and voucher for payment of lorry hire, details of the payment made to the seller and bank statement, etc., stating that if the details sought for were not furnished, the above said claim of ITC would be reversed and apart from levy of tax on account of reversal of ITC, penalty of 50% under Section 27 (4)(i) of the Act would also be imposed. As no reply was sent by the Petitioner, the impugned proceedings dated 25.5.2015, confirming the reversal of claim of ITC to the tune of Rs.79,90,385/- for the year 2013-14 and imposing 50% penalty, has been issued. The same is challenged in this Writ Petition.

3. The grounds, on which the impugned proceeding is sought to be quashed, are that without effecting mandatory deemed

assessment in terms of Section 22 of the Act, the impugned order has been issued. The learned counsel further contended that Section 22 stipulates that deemed assessment for the assessment year 2013-14 shall be deemed to have been completed as on 30.10.2014 if the same has not yet been made. When there is no returns filed by the assessee, then the Assessing Authority is entitled to invoke Section 22(4) of the Act. Further, the learned counsel for the Petitioner submitted that the Petitioner is having all original tax invoices as contemplated under Section 19(10)(a) of the Act. The transactions carried out are all local transactions inside the State and therefore, there is no provision under law, stipulating production of details for movement of goods for intra-state transactions. The action of the respondent in disallowing the claim of ITC, without giving sufficient opportunity, is not supported by law and hence, it is certainly unwarranted. The Petitioner is ready and willing to produce all the documents, if an opportunity is provided. Hence, the learned counsel for the Petitioner seeks to quash the same.

4. This court heard the learned counsel on either side and considered their submissions and also perused the materials available on record.

5. The impugned proceedings passed by the respondent is under Section 27(2) of the TNVAT Act, which is an independent one. If any order passed without reasonable opportunity, the same is unsustainable, inasmuch as it has been passed by invoking Section 27 of the TNVAT Act, which mandates the same. In the case on hand, sufficient opportunity was not given to the Petitioner who agrees to produce all the required documents as provided in Rule 10(3)(b)(viii) of the TNVAT Rules 2007.

6. In view of the above, the impugned proceedings passed by the respondent is set aside. The Petitioner is directed to submit a detailed reply along with all the documents within two weeks from the date of receipt of a copy of this order. On such filing, the respondent is directed to reconsider the matter afresh and pass orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the Petitioner, within a period of four weeks thereafter.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Srcm

To:

The Assistant Commissioner(CT),
Erode Rural Assessment Circle
Erode.

+1cc to M/s. R. Hemalatha, Advocate, S.R.No.42428

+1cc to the Government Pleader, S.R.No.42352

KSJ(CO)
EU(08/09/2015)