IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.26827 of 2015

M/s.DSM Ispat,
Rep. By its Proprietor
Dilip Singh Mohta,
D-126/121, Sho G-4, D Block,
Anna Nagar East,
Chennai 600 102.

... Petitioner

-Versus-

The Assistant Commissioner,
Amaindakarai Assessment Circle,
Taylors Road,
Chennai 600 010.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorari calling for the records relating to the assessment order passed by the respondent in TIN/33961024708/2008-09 dated 29.07.2015 and to quash the above said proceedings.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.V.Haribabu, AGP (T)

COMMON ORDER

Seeking to quash the impugned order passed by the respondent on 29.07.2015 in TIN /3396 1024708/2008-09 determining the additional tax liability for the year 2008-2009, without disturbing the monthly returns, on account of reversal of Input Tax Credit (ITC) to the tune of RS.3,83,824/- relating to the purchase made during January and February, 2015, the petitioner is now before this court with this writ petition.

2. The case of the petitioner in brief is as follows:- The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act and an assessee on the file of the respondent. The petitioner used to purchase goods from local registered dealers and claim in put tax credit. The petitioner has been filing its returns regularly. While so, when the assessing authority inspected the business place of Tvl.Gayathri Enterprise at Saligramam and found that registration of the dealer was cancelled from 22.06.2009 and noticed that they have issued sale bills only and not actually made any supply to the petitioner.

3. According to petitioner, based on the above, the respondent issued a notice to the petitioner on 10.06.2015 and thereafter passed the impugned order. The grievance of the petitioner is that the cancellation of registration of the dealer was with effect from 21.06.2009 whereas the supplies were effected during January and February 2009 and therefore, the impugned order which has been passed without affording sufficient opportunity to the petitioner is liable to be set aside.

4. Heard both sides and also perused the records carefully.

5. Since because the suppliers/dealders registration was cancelled, the petitioner's tax liability was determined by the authority which is the only issue involved in this case.

6. Even according to the respondent, the supplier's'/dealer's registration certificate came to be cancelled only on 21.06.2009, whereas the purchases were effected in the month of January and February 2009, which were well within the time of existence of the registration certificate of the seller.

7. Further, it could be seen from the impugned order, the wrong availment of input tax credit (ITC) by the seller was the only reason for penalizing the petitioner and that the impugned order came to be passed by the respondent without affording sufficient opportunity to the petitioner to put forth its objection.

8. The learned Special Government Pleader (Taxes) would submit that the authority will provide yet another opportunity for the petitioner so as to produce all the required documents and if he avails the opportunity of personal hearing, appropriate order would be passed on merits and in accordance with law.

9. In view of the above, the impugned order is set aside and the matter is remitted back to the authority for passing orders afresh. The petitioner is directed to appear on any one of the working days within a period of two weeks from the date of receipt of a copy of this order and produce all the available relevant documents and on such appearance of the petitioner and production of documents, the respondent shall consider the same and pass appropriate orders in the matter on merits and in accordance with law within a period of four weeks thereafter. The writ petition is disposed of accordingly. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Assistant Commissioner,
Amaindakarai Assessment Circle,
Taylors Road, Chennai 600 010.

+ 1 cc to Mr.R. Kumar, Advocate Sr.45961

W.P.No.26827 of 2015

KSJ(CO)
EU 11.09.15