IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.27286 of 2015
and M.P.No.1 of 2015

M/s.A One Leathers
[Petitioner]
rep. by its Partner P.Shafeeq Ahmed
1056/B-4 Konamedu,
Vaniyambadi, Vellore District.

Vs

The Commercial Tax Officer (FAC)
Vaniyambadi, Vellore District.
[Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the respondent in his proceedings in TIN 33324640638/2009-10 A1.211/13 (AAO 3-1) dated 3.7.2015 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.V.Haribabu, AGP

O R D E R

Heard the learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent and with their consent, the main writ petition is taken up for disposal.

2. This writ petition is filed challenging the order of the respondent issued in TIN.33324640638/2009-10 A1.211/13 (AAO 3-1) dated 03.07.2015.

3. The petitioners are Tanners and Exporters of Finished Leather and Leather Garments, according to the learned counsel for the petitioner. For the assessment year 2009-10, the petitioner was finally assessed to tax on the total and taxable turnover of Rs.5,26,26,182/- and Rs.5,20,35,431/- respectively under Section 22

(2) of the TNVAT Act under self assessment. In respect of the said assessment year, the respondent, by notice dated 16.07.2014, for the month of January 2010, has proposed to reverse the ITC claim made by the petitioner besides proposing to levy penalty. The petitioner, on 25.08.2014, filed a reply by stating that by oversight they omitted to enclose certain purchases in Annexure I of Form 1 return and they have filed the revised return by disclosing the correct purchases in Annexure I for the month of January 2010 manually, by pointing out that a clerical error has crept in and only in the annexure there was omission and the same was rectified by filing revised return and also brought to their notice that they have reported correct purchases in the return. Further, according to the learned counsel, the petitioner also pointing out that the ITC carried over remains the same in both the original and the revised return, had requested the respondent to drop the proposal to reverse the ITC and so also the penalty. The said reply was received by the respondent on 02.09.2014. However, the respondent has issued another notice dated 27.02.2015 for the same month viz., January 2010, without reference to the reply filed by the petitioner, by stating that the petitioner has claimed ITC on and from RC cancelled dealers in Annexure I enclosed and there is a difference in ITC claim as per Form I and as per annexure and hence they propose to reverse the ITC besides proposing imposition of penalty. Thereafter, without affording due opportunity, the impugned order dated 03.07.2015 came to be passed. Hence, the learned counsel for the petitioner has sought for quashing of the same.

4. Admittedly, pursuant to the notice dated 16.07.2014, the petitioner has filed a reply dated 25.08.2014, which was received by the respondent on 02.09.2014. However, without considering the same, another notice was issued and thereafter, without providing sufficient opportunity to the petitioner, the impugned order came to be passed.

5. Hence, this Court is of the view that the impugned order passed by the respondent dated 03.07.2015 is liable to be set aside and the matter has to be remitted back to the respondent for passing fresh orders, after providing due opportunity to the petitioner.

6. In view of the same, by quashing the impugned order dated 03.07.2015, the matter is remitted back to the respondent for passing orders afresh. It is made clear that the petitioner is permitted to file additional objections, if any, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the same and pass appropriate orders afresh, after considering the detailed reply earlier filed along with Form I as well as annexure II, within a period of four weeks thereafter.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rg

To

The Commercial Tax Officer (FAC)
Vaniyambadi, Vellore District.

1 cc to Mr.S. Ramanathan, Advocate, Sr. 46558
1 cc to Spl.Government Pleader, Sr. 46822

W.P.No.27286 of 2015

NM (CO)
kk 10/9