IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2939 of 2015
And
M.P.No.1 of 2015

M/s.Sarita Steels [Petitioner]
Rep by its Proprietor Subod Kumar Garg
No.26/37 Meenu Apartments Barnaby Road
Chennai

Vs

The Assistant Commissioner(CT)
Kilpauk Assessment Cirlcle
Chennai 600 010 [Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the impugned assessment order in TIN No.33381122706/2011-12 dated 31.12.2014 from the files of the first respondent herein quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondent : Mr.Cibi Vishnu, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the respondent.

2. The petitioner has come forward with this writ petition challenging the order of the respondent dated 31.12.2014.

3. The facts leading to the filing of this writ petition is that the petitioner is dealing in the business of steel supplies and they submitted their monthly returns for the assessment year 2011-2012. Whileso, an inspection was conducted by the Enforcement Wing Officials on 13.06.2013, 14.06.2013 and 17.06.2013. After such

inspection was made, the Enforcement Wing Officials, issued notice dated 02.07.2013 proposing to reverse the ITC for the purchase made from M/s Avathar Sales Corporation and M/s Kuber Enterprises on the ground that the registration certificates of these sellers had been cancelled retrospectively. They also alleged sales suppression and other discrepancies. A reply was also submitted by the petitioner on 25.07.2013. However, without accepting the same, the Enforcement Wing Officials, without affording an opportunity of personal hearing sought by the petitioner, transferred the files to the respondent with their report with a direction to decide the issue in the light of their proposals and in the light of the documents available. Based on such report, the respondent issued a pre-revision notice on 16.05.2014. To the said show cause notice, again an objection was given by the petitioner on 03.06.2014 to the respondent and the petitioner requested the authority to drop the proceedings of reassessment along with the proposed levy of penalty under Section 27 (3) of the 2006 Act. However, the respondent has passed the impugned order. In the impugned order, the respondent has brushed aside the objections in one sentence and stated that the objections have been carefully considered and stated that the sellers registration have been cancelled with effect from 08.06.2011 and 28.02.2011 respectively and therefore, overruled their objections and confirmed the proposal reversing the ITC of Rs.807462 along with interest at 1.25% u/s 42(4) of the 2006 Act. They have also objected for the delivery charges to the tune of Rs.2 lakhs. However, with regard to reconciliation of monthly returns with that of the books of accounts, the monthly return was considered and the proposal to levy tax was dropped. Aggrieved against the same, this writ petition is filed.

4. The learned counsel for the petitioner contended that the registration certificate cannot be cancelled retrospectively. In support of this contention, the learned counsel relied on a decision of this Court reported in [2013] 59 VST 256 (Jinsasan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai) and the relevant paragraph of the said decision reads as follows:-

> "...Ïn the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input-tax credit on the plea that registration certificates have been cancelled with retrospective effect cannot be countenanced. Whatever benefits that has accrued to the petitioners based on valid documents in the course of sale and purchase of goods, for which tax has been paid cannot be declined. The transaction that took place when the registration certificates of the selling

dealer were in force cannot be denied to the petitioners/assessees on the above plea. This is contrary to the law laid down by the Supreme Court in the above stated case.

For the foregoing reasons, the notices, revised assessment orders and the provisional assessment order, insofar as it seeks to deny the benefit of input tax credit to the petitioners/assessees only on the ground that the registration certificates of the selling dealers have been cancelled with retrospective effect, are set aside....".

5. The learned counsel for the petitioner also contended that the respondent without application of mind, has chosen to follow the directions of Enforcement Wing Official that the decision referred to above was not applicable to the facts of this Case as the petitioner was not a party to that case. She would further urge that the legal principle laid down by this Court is judgment in rem and hence applicable to the facts of the petitioner's case. She further contended that the respondent being a quasi judicial authority, ought to have examined the issue independently and passed orders.

Based on these, the learned counsel for the petitioner has sought for quashing of the impugned order dated 31.12.2014.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. In this writ petition, this Court is not going into the disputed facts. The admitted fact is that the objections made by the petitioner was over ruled by the Assessing Officer mainly on the ground that the Enforcement Wing has directed to levy interest as per Section 42(3) and proposed to reverse ITC with interest at 1.25% under Section 42(4) of the 2006 Act. In the impugned order, the authority in one line has brushed aside the decision quoted by the petitioner by stating that the said decision viz., 59 VST P.256 is not applicable to the facts of the case. Since the writ petitioner is also similarly placed, I am of the view that the writ petitioner is entitled to succeed on the following grounds

(i) firstly, there cannot be cancellation of registration retrospectively.

(ii) Secondly, the Assessing Officer has not considered the objection in detail before reversing ITC and proposed to levy tax on delivery charges.

(iii) The Assessing Officer was directed by the Enforcement Wing to levy interest under

Section 42(3) and also to implement the same.

8. In view of the above, the impugned order of the respondent dated 31.12.2014 is set aside and the matter is remitted back to the authority concerned to consider the case of the petitioner afresh and pass orders on merits and in accordance with law. The petitioner is directed to appear before the respondent with all documents on 04.03.2015 and on such appearance, the respondent is directed to consider the case of the petitioner afresh, after affording an opportunity of being heard to the petitioner and pass appropriate orders on merits and in accordance with law. If on 04.03.2015, the petitioner fails to avail the opportunity, the respondent is directed to consider the case of the petitioner and pass appropriate orders based on the materials available on record.

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

Sd/-
Assistant Registrar

/ True copy /

Sub Assistant Registrar

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To

The Assistant Commissioner(CT)
Kilpauk Assessment Cirlcle Chennai 600 010

+1 cc to M/s.Aparna Nandakumar, Advocate SR.6399

+1 cc to Special Government Pleader SR.6468

W.P.No.2939 of 2015
And
M.P.No.1 of 2015

NM(CO)
JK 21/02/15