IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3125 of 2015
and
M.P.No.1 of 2015

Horizon Paper Box Pvt. Ltd.,
Represented by its Director,
Anilkumar Sachdev,
16, 4th Lane,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034. .. Petitioner

Versus

The Assistant Commissioner (CT),
Royapettah I Assessment Circle,
Chennai - 600 028. .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records on the file of the respondent herein in TIN:33250720858/2011-12 dated 12.11.2014 and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.Manohar Sundaram,
Additional Government Pleader (T)

O R D E R

The petitioner has come forward with this writ petition praying to call for the records on the file of the respondent herein in TIN:33250720858/2011-12 dated 12.11.2014 and quash the same.

2. According to the petitioner, he has received an intimation proposing to reverse input tax credit and the said notice was duly effected to by the petitioner vide his

letter dated 16.11.2012 explaining that there was no purchasers from RC cancelled dealers along with invoices. The petitioner submitted that he has also enclosed necessary tax invoices in support of his contention. When the matter stood thus, without passing an order one way or other, the petitioner has shocked to receive another notice dated 15.05.2014 again proposing to reverse the input tax credit. The petitioner replied stating that he has already submitted an explanation on 16.11.2012 and the same was enclosed along with the letter dated 02.06.2014. Without looking into the objections, the impugned order dated 12.11.2014 has been passed stating that the penalty has been levied under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006. The petitioner contended that the assessment for the year 2011-2012 was under Section 22(2) and there is no question of escaped assessment for which no notice was received. That apart he has contended that the Assessing Officer has stated that the petitioner has not filed any objections and hence the proposal to reverse the input tax credit ineligible was confirmed. The respondent could not dispute the fact contended by the petitioner. The petitioner's request to consider his replies dated 16.11.2012 and 02.06.2014 went unheeded as according to the petitioner the Assessing Officer has stated that already orders have been passed.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

4. The impugned order is liable to be set aside on two grounds. Firstly, when there was an objection to the proposal to reverse input tax credit in the year 2012, no decision has been taken. When that was pending, yet another notice for the same reversal of input tax credit was issued to the petitioner. That apart the objections filed by the petitioner have not been considered and the authority proceeded the impugned order that the petitioner has not filed any objections. Hence, as there is no opportunity of being heard, the impugned order is set aside and the matter is remitted to the authority concerned to consider the case of the petitioner afresh, after taking into account the objections filed by the petitioner and also after affording an opportunity of being heard. The petitioner is directed to appear before the authority concerned on 03.03.2015. In the meantime, it is open to the petitioner to send his additional objections, if any. If the petitioner fails to avail such an opportunity on that date, it is open to the authority to pass orders on merits and in accordance with law, recording the objections of the petitioner.

The writ petition is allowed as stated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

jrl

To

The Assistant Commissioner (CT),
Royapettah I Assessment Circle,
Chennai - 600 028.

1 cc to M/s. N. Inbarajan, Advocate, Sr. 6764
1 cc to Spl.Government Pleader, sr. 7120

W.P.No.3125 of 2015

ALA (CO)
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