IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.35018 and 35019 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s.Enco Shoes,
rep. by Managing partner ... Petitioner in both WPs

Vs

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Chennai. ... Respondent in both Wps

Writ petitions have been filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the impugned assessment orders in TIN Nos.33801001807/2011-12 and 33801001807/2012-13 dated 05.10.2015 respectively of the respondent and quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondent : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader (T)

COMMON ORDER

By consent, both the writ petitions are taken up for final disposal.

2.Challenging the assessment orders dated 05.10.2015 passed by the respondent relating to the years 2011-12 and 2012-13, the petitioner has filed the present writ petitions.

3.According to the learned counsel for the petitioner, the petitioner is a registered dealer in shoe uppers and full shoes and duly filed its returns for the assessment years 2011-12 and 2012-13. While so, an inspection was conducted and based on the same, notices dated 25.08.2015 were issued, alleging difference between the balance sheet and the returns filed on export sales related purchases and also proposing to reverse the Input Tax Credit (ITC) on purchases made from the dealers, whose registration certificates were cancelled. The respondent also proposed to levy penalty. In response to the same, the petitioner filed its reply dated 01.10.2015 to both the notices and requested an opportunity of personal hearing to defend their case with the relevant documents. However, the respondent without providing one such opportunity, passed the impugned assessment orders for the years in question. Hence, the petitioner is before this court.

4.The learned counsel for the petitioner submitted that though the impugned orders came to be passed on various issues, the petitioner sought to challenge the same only on the following two grounds: (i)reversal of ITC on the purchases effected from the registration certificate cancelled dealers and (ii)difference between the balance sheet and the returns filed on export sales related purchases.

5.Regarding the first ground, it is the specific case of the learned counsel for the petitioner that the purchases have been effected from the dealers, whose registration certificates were in effect and without considering the same, the respondent wrongly observed in the impugned orders that such purchases have been made from the registration certificate cancelled dealers.

6.Insofar as the second ground is concerned, it is submitted by the learned counsel for the petitioner that despite the objections filed by the petitioner, the respondent without granting further time for production of supportive documents as well as without providing an opportunity of personal hearing to the petitioner, passed the impugned orders. Hence, the learned counsel for the petitioner prayed for setting aside the impugned orders.

7.The learned Additional Government Pleader, on instructions from the respondent, fairly submitted that with respect to the first ground, the purchases have been effected from the dealers, whose registration was in existence and hence, the observation of the respondent in this regard is incorrect. Regarding the second ground, the learned Additional Government Pleader also fairly submitted that no opportunity of personal hearing was provided to the petitioner.

8.In view of the same, the impugned assessment orders dated 05.10.2015 passed by the respondent for the years 2011-12 and 2012-13 are liable to be quashed, so as to enable the petitioner to produce the relevant documents as well as to avail an opportunity of personal hearing. Accordingly, the same are set aside. The matters are remitted back to the respondent for passing fresh assessment orders relating to the years in question, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner. The petitioner shall appear and file necessary documents and objections within two weeks from the date of receipt of a copy of this order. Thereafter, considering the documents and objections, assessment orders shall be passed within four weeks.

9.Accordingly, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rk
To

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Chennai.

+1 cc to Special Government Pleader sr.63482
+3 cc to M/S.Aparna nandakumar Advocate sr.63476

+ 1 cc to The Spl.Govt.Pleader (Taxes), High Court, Mds-104.
Sr 63481 (11/1/16)

W.P.Nos.35018 and 35019 of 2015

aa17/12/2015