IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.35036 of 2015
and
M.P.No.1 of 2015

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

Vs

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Chennai. ... Respondent

Writ petition has been filed under 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the impugned assessment order in TIN No.33800100l807/2013-14 dated 5.10.2015 from the files of the respondent and quash the same.

For Petitioner : Mrs.Aparna Nandakumar

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

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.Challenging the assessment order dated 05.10.2015 passed by the respondent relating to the year 2013-14, the petitioner has filed the present writ petition.

3.According to the petitioner, the petitioner is a registered dealer in shoe uppers and full shoes and duly filed its returns for the assessment year 2013-14. While so, an inspection was conducted and based on the same, notice dated 25.08.2015 was issued, alleging stock difference 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 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 order. Hence, the petitioner is before this court.

4.The learned counsel for the petitioner submitted that though the impugned order 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 in stock.

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 order 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 order. Hence, the learned counsel for the petitioner prayed for setting aside the impugned order.

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 order dated 5.10.2015 passed by the respondent for the year 2013-14 is 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 is set aside. The matter is remitted back to the respondent for passing fresh assessment order relating to the year in question, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

9.Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To
The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Chennai.

W.P.No.35036 of 2015

mg co
kra 14.12.2015