IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.37902 of 2015
and M.P.No.1 of 2015

Mc.Rennet Foods Private Limited,
represented by its Managing Director
Thiru S.Ravichandran ... Petitioner

Vs

Assistant Commissioner (C.T.),
Annasalai Assessment Circle,
No.1, PAPJM Annexe Building,
IV Floor,Greams Road,
Chennai 600 006.

[Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records relating to the Assessment Order in TIN/33040640221/2012-2013 dated 05.10.2015 passed by the respondent, quash the same as arbitrary and illegal.

For petitioner : Mr. Joseph Prabakar

For respondent : Mr.S.Kanmani Annamalai
Additional Govt. Pleader

O R D E R

Heard the learned counsel for the petitioner and Mr.Joseph Prabakar learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition is taken up for disposal.

2. The petitioner company is a baker involved in the manufacture of both taxable and exempted bakery products and in addition to the manufacture of bakery products, it also involved in trading of branded bakery products of other companies. The petitioner is a registered dealer under TNVAT Act 2006 and CST Act, 1956.

3. According to the petitioner, the petitioner had filed monthly returns under TNVAT Act , 2006 under Section 21 of the Act along with details of input tax credit claim, out put tax payable, ITC adjusted, ITC reversed and the balance of VAT payable. On 16.4.2014, the respondent issued a notice proposing to reverse ITC to an extent of Rs.13,26,379/- on the sale of exempted bakery products. On 4.9.2015, the respondent issued a revision notice proposing to reverse the difference ITC amount of Rs.9,31,107.00 under Section 19(12) of the Act for the assessment year 2012-2013 and also proposed to levy penalty at 50% on the differential ITC amount at Rs.4,65,554/-. Therefore, the petitioner filed a detailed objections in their letter dated 26.09.2015 highlighting the difference in the amount of ITC, the exempted and total turnover adopted in the formula for the computation of reversal of ITC. Despite this, the respondent in its impugned proceedings dated 5.10.2015, by adopting Rs.3,95,272/- as the actual amount of ITC reversed and paid, computed the balance amount of ITC liable for reversal as Rs.9,46,848/- and levied penalty at Rs.4,73,424/-.

4. The petitioner herein filed a petition under Section 84 of the TNVAT Act to the respondent on 5.11.2015 stating that the revised order has been passed by mistake of law and mistake of fact of incorrect adoption of amount of ITC reversed and hence, it is liable to be rectified under Section 84 of the Act and requested the respondent to issue a revised order. The respondent had rejected the said petition filed by the petitioner by order passed in TIN/33040640221/2012-2013/RC/96/15 (AG) dated 16.11.2015, observing that the impugned order dated 5.10.2015 was passed after considering the objections and also providing an opportunity of personal hearing. Hence, the petitioner is before this Court.

5. Learned counsel for the petitioner submitted that the impugned order contains errors apparent on the face of record and the same has been passed in gross violation of principles of natural justice without conducting an enquiry as contemplated under section 27(2) of the Tamilnadu Value Added Tax Act, 2006. He further submitted that if the respondent had conducted an enquiry under section 27(2) of the Act, the correct facts would have been placed before the respondent and hence the impugned order is passed in gross violation of principles of natural justice and therefore, the impugned order is liable to be set aside.

6. I have heard the submissions of learned counsel for petitioner and learned Additional Government Pleader (T).

7. After elaborate arguments, learned counsel for the petitioner submitted that it would be suffice if the petitioner is given an opportunity for production of all the

documents for the purpose of quantifying the actual taxes to be paid, it would meet the ends of justice.

8. For such prayer, there is no serious objection raised by the learned Additional Government Pleader(T).

9. Pointing out certain errors apparent on the face of the record, the petitioner moved an application under Section 84 of the TNVAT Act for the assessment years in question and the said petition was rejected without opportunity. Further, in the impugned order dated 5.10.2015, no suppression of assessable turnover has been established. No enquiry as contemplated under section 27 of the TNVAT Act was conducted for imposing penalty. In view of the same, the impugned order is liable to be set aside, accordingly, the same is set aside. The petitioner is directed to file all the documents within two weeks from the date of receipt of a copy of this order. On such filing, the respondent is directed to consider the documents filed by the petitioner and pass appropriate orders on merits and in accordance with law after affording due opportunity to the petitioner. Such exercise shall be completed within a period of six weeks from the date of receipt of the documents from the petitioner. If the petitioner fails to avail this opportunity, it is open to the respondent to pass appropriate orders forthwith.

10. The Writ Petition is disposed of in the above terms. Consequently, the connected M.P.No.1 of 2015 is closed.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To
The Assistant Commissioner (C.T.),
Annasalai Assessment Circle,
No.1, PAPJM Annexe Building,
IV Floor,Greams Road,
Chennai 600 006.

+1 cc to Mr.Joseph Prabhakar Advocate sr.64628

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