IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4044 of 2015
and
M.P.No.1 of 2015

M/s. Amarprakash Developers (P) Ltd.,
Rep. by its Director,
No.42, Rajendra Prasad Road,
Chennai-600 004. .. Petitioner

Vs

The Assistant Commissioner (CT)
Chrompet Assessment Circle,
Chennai-600 006. .. Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33900946268/2011-12, quash the assessment order dated 09.01.2015 made therein.

For Petitioner : Mr. C.Subramanian
For Respondent : Mr.ANR.Jayapratap, AGP(T)

ORDER

The petitioner has come forward with this writ petition challenging the order of the respondent dated 09.01.2015.

2. The case of the petitioner is that the petitioner has received a revision of assessment notice dated 17.09.2014, proposing to levy interest for belated payment of TDS under Section 42(3) of the Act and the petitioner was asked to submit the reply. Learned counsel for the the petitioner submitted that the petitioner has given a reply, dated 29.12.2014 and also received the acknowledgement from the authority to the effect that the revised VAT returns for the year 2011- 2012 along with annexure. On 02.12.2014, the Assistant Commissioner sent a letter that after verification of the assessment records, they have decided to disallow the ITC for the period from November 2011 to March 2012, since the claim has been made beyond 90 days of purchase.

3. Learned counsel for the petitioner contended that in terms of

Section 19 (II) of the Act, the petitioner has filed the revised returns for 2011-12 before of the end of the financial year to the respondent, i.e. on 30.03.2012. Learned counsel for the petitioner stated that in response to the original notice dated 17.09.2014, proposing to levy penalty and interest, they have submitted all the documents required for the period in question on 30th March 2012, which has been acknowledged by the authority and the present decision taken by the authority is contrary to the provisions of Section 19 (11) of the Tamil Nadu Value Added Tax, 2006 which clearly says that in case any registered dealer fail to claim ITC in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchaser, whichever is later. The word 'later' cannot be read as 'earlier'. However, the authority has proceeded to pass impugned order dated 09.01.2015, wherein the objections of the petitioner have been extracted and finally came to the conclusion that the dealers had not filed any returns before March, 2012 and that the returns filed only on 03.04.2012, after the closure of the financial year and hence they are not eligible for ITC.

4. Learned counsel for the respondent submitted that if at all the petitioner is aggrieved over the impugned order, it is open to the petitioner to file an statutory appeal before the authority concerned and there is no need for the petitioner to invoke the jurisdiction of this Court to correct the order impugned in this writ petition.

5. Heard both sides

6. The acknowledgement card was produced by the petitioner signed by the respondent clearly shows that the petitioner has submitted all the documents on 30.03.2012 and the petitioner has got 90 days time therefrom to file the returns. There is no evidence to show that the returns have been field only on 3.04.2012, when the petitioner has specifically pleaded that all the documents and the returns have been filed on 30.03.2012. Hence, I find merit in the arguments of the petitioner and allowed the writ petition and setting aside the order impugned in the writ petition and remitting the matter before the original authority to consider the case of the petitioner afresh, on merits and in accordance with law and pass orders within a period of four weeks from the date of personal hearing being heard to the petitioner and the petitioner shall appear before the authority on 05.04.2015.

7. With the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Assistant Commissioner (CT)
Chrompet Assessment Circle,
Chennai-600 006.

+1 CC to Mr. C.SUBRAMANIAN, Advocate, SR.No.8337.
+1 CC to Special Government Pleader (Taxes), SR.No.8750.

W.P.No.4044 of 2015
And
M.P.No.1 of 2015

RR 26/03/2015
AK[CO]