IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.2.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4115 of 2015
and
M.P.No.1 of 2015

M/s. Amarprakash Developers
(P) Ltd.
Represented by its Director
No.42 Rajendra Prasad Road
Chennai 600 044. ... Petitioner

vs.

The Assistant Commissioner(CT)
Chrompet Assessment Circle
Chennai 666 006. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the respondent in his proceedings in TIN: 33900946268/2013-14 and quash the assessment order dated 09.01.2015 made therein.

For Petitioner : Mr.C.Subramanian

For Respondent : Mr.Kanmani Annamalai, AGP (T)

ORDER

Petitioner has come forward with the aforesaid prayer.

2. The petitioner contended that the respondent was wrong in issuing notice under section 17.9.2014 proposing to reverse the excess input tax credit failing to realise that the said excess input tax has been carried forward in the monthly return for April 2013 was duly reversed in the monthly return filed for the month of February 2014 itself. The petitioner further stated that the petitioner, upon being pointed out by the inspection officers about the excess input tax credit carried forward, had duly reversed the

same and the inspection had taken place only in the month of March and the reversal could not have taken place in February 2014.

3. The petitioner filed a reply on 29.12.2014 stating that due to oversight, the petitioner, without reversing the excess input tax credit of Rs.17,09,885/= carried forward in the monthly return for April 2013 was already reversed in monthly return filed for February 2014, had mistakenly stated that the said excess input tax credit was given in monthly return filed for March 2013 itself and hence, there was no excess carry forward for being reversed. Since the reply filed by the petitioner was wrong, the assessing officer proceeded to pass assessment order on 9.1.2015 reversing the input tax credit mentioned supra and raising a demand for the said sum. The petitioner further stated that the petitioner realised their mistake and immediately appeared before the respondent alongwith a copy of e-return filed for the month of February 2014 which reflected the reversal of a sum of Rs.17,09,885/= and requested the respondent and consider the same and drop the demand for reversal of input tax credit. The respondent refused to accede to the request of the petitioner as much water has flown. The petitioner stated that even though they have got a remedy of filing an appeal, as there is an error has crept in and there is no suppression of any fact and it was only a mistake that has crept in in the statement made by the petitioner in their reply dated 29.12.2014, the petitioner stated that they may be given an opportunity to putforth their statement before the authority concerned so that the authority can consider the same and pass orders on merits.

4. From the narration of events, it is clear that there is a mistake on the part of the petitioner. Even though the petitioner has got a remedy under section 84 of the Tamil Nadu Value Added Tax, Act 2006, considering the fact that the petitioner has not suppressed any fact and only based on the incorrect statement made by them, the impugned order has been passed, the impugned order has to be quashed.

5. In response, the respondent submitted that the petitioner either can prefer an appeal or file petition under section 84 to rectify the error.

6. Heard the learned counsel for both the parties.

7. It is a mistake of fact presented by the petitioner before the authority which has been done unintentionally. Therefore, I find that the petitioner may be given an opportunity by the authority to revoke the issues and consider the case and pass orders on merits and in accordance with law. Though the contentions of the respondent

was well founded, as an exceptional case, as there is no misrepresentation and that there is a genuine mistake that has crept in, this court finds that the petitioner may be given another opportunity by the original authority. The impugned order is set aside and the matter is remitted to the original authority to consider the case afresh and pass orders on merits in accordance with law within a period of two weeks from the date of receipt of personal hearing of the petitioner. The petitioner is directed to appear for personal hearing on 3.3.2015.

8. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

/true copy/

Sub Assistant Registrar.

ssk.

To

The Assistant Commissioner(CT)
Chrompet Assessment Circle
Chennai 666 006.

+1cc to Mr.C.Subramanian, Advocate, S.R.No.8864
+1cc to the Special Government Pleader, S.R.No.9087

W.P.No.4115 of 2015

GP(CO)
CA(05/03/2015)