IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. No.5245 of 2015

M/s.Maha Hydraulics (P) Ltd.,
rep. by its General Manager .. Petitioner

Vs.

The Assistant Commissioner (CT),
Alwarpet Assessment Circle,
Chennai-600 028. .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN No.33660820882/2011-12 and to quash the assessment order dated 28.01.2015 made therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.Manoharan Sundaram
AGP (T)

O R D E R

The Writ Petitioner has come forward with the aforesaid prayer.

2.The case of the petitioner is that as and when there is an intimation from the respondent with regard to the reversal of ITC, petitioner has submitted the statement every month before the authority. When the notice dated 28.12.2012 was issued asking the petitioner to reverse ITC to the tune of Rs.36,64,083/-, the petitioner reversed the ITC to the tune of Rs.21,47,375/- and submitted the VAT return filed for December 2012 on 23.01.2013. On 26.05.2014, there was a notice issued by the respondent asking the petitioner to submit the explanation with regard to wrong availment of ITC for a sum of Rs.72,63,712/-. On 02.06.2014, the petitioner submitted an explanation stating that already there is a reversal of ITC to the tune of Rs.33,98,791/- has been filed and the same has not been considered and that the petitioner was willing to produce all the documents available with him. The respondent taking note of the objection, asked the petitioner to produce the original purchase invoices, movement of goods and bank reconciliation statement to prove the genuineness of the claim of ITC. On 01.08.2014, there was an inspection by the Enforcement Wing during which time a sum of Rs.28,45,177/- was collected for wrong availment of ITC in respect of purchases effected from dealers whose TIN numbers have been cancelled. The petitioner objected to the above and requested for furnishing of the details of the vendors. After the communication between the parties, more particularly, details furnished by the petitioner, the petitioner received a notice and there was an impugned order on 28.01.2015 confirming demand of Rs.72,03,712/- on the ground that no documentary evidence has been produced in support of the claim of ITC. The petitioner submitted that even though there is reversal of ITC, the same has not been considered by the respondent. He also relied upon a decision of this Court in Amutha Metals v. Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai reported in 2007 9 VST 478 wherein this Court has observed as follows:

> "In these two cases, it is accepted by the assessing officer that for a pre-revision notice, the petitioner has given objections. The objections have to be considered by the assessing officer on their own merits. However, the assessing officer proceeded to the effect that:
> ...."

3.Learned counsel for the respondent is unable to refute the contention of the petitioner. The authority has passed an order without looking into any of the objection raised by the petitioner. Since there is a complete non application of mind by the authority concerned, this Court set aside the impugned order and remit the matter to the original authority. The authority concerned shall take into account the objection given by the petitioner and answer the same, para wise. Since the original authority/respondent herein has not dealt with the issue correctly, a new authority could hear the matter and pass appropriate orders.

4.This Court makes it clear that the authority, who passed the order and dealt with the same in respect of the several documents and also objections, has not dealt with the issue correctly. Hence, the same authority should not hear the matter. The New authority, who is going to hear the matter, shall hear the petitioner in person on 23.03.2015 and pass fresh orders, on merits and in accordance with law. Accordingly, the impugned order is set aside and the writ petition is allowed. Consequently, connected M.P. is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

The Assistant Commissioner (CT),
Alwarpet Assessment Circle,
Chennai-600 028.

+ 1 cc to M/s. P.V. Sudakar, Advocate Sr.10833
+ 1 cc to the Special Government pleader SR.11117

W.P. No.5245 of 2015

ALA(CO)
Eu 16.03.15