IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.03.2015
CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6980 of 2015
and
M.P.No.1 of 2015

M/s.New Consolidated Construction Co. Ltd.,
represented by its Vice President
CA.d Udaykumar B.N.,
3, Venkatesapuram Colony,
2nd Street, Chennai - 23. ... Petitioner

vs.

The Assistant Commissioner (CT),
Ayyanavaram Assessment Circle,
7th Floor, Dowlath Towers,
Taylors Road, Chennai - 10. ... Respondents

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN/33521002640/2012-13 dated 31.12.2014 and quash the same.

For Petitioner : Mr.R.Kumar

For Respondents: Mr.Cibi Vishnu
Additional Government Pleader (Taxes)

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O R D E R

Heard Mr.R.Kumar, learned counsel for petitioner and Mr.Gibi Vishnu, learned Additional Government Pleader (Taxes). With the consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is a works contractor and registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'Act 2006'). The Officials of the Enforcement Wing inspected the place of business of the petitioner on 27.12.2013, 08.01.2014 and 18.01.2014 and certain defects were pointed out. Based on the said inspection, the first respondent issued a notice dated 28.11.2014 proposing to revise the assessment under Section 27 r/w 19(16) of the Act, 2006 and also proposing to levy penalty on the wrong claim of input tax under Section 27(4) of the Act. The petitioner submitted their reply along with copies of purchase invoices of M/s.Sujana Metal Products Limited. After verification, the inspecting officer came to the conclusion that the Input Tax Credit claim of the petitioner was not

in order and sent a proposal to the respondent for implementation. The respondent, without calling for the books, issued notice for reversal of Input Tax Credit claim for the purchases made from the said seller. The petitioner submitted its reply and without considering the same, the respondent passed the impugned proceedings.

3. The petitioner has challenged the impugned order on the ground of violation of principles of natural justice and that the same is contrary to the law laid down by this Court in the case of Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT) reported in (2012) 50 VST 179 (Mad). In the said decision, this Court considering somewhat an identical situation, the only difference being in the said case it was pertaining to refund and in the instant case, it pertains to Input Tax Credit, has held as follows:

> "As already pointed out, the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. As already pointed out, the Revenue does not deny, as a matter of fact, that the assessee's vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, I do not think that the Revenue could deny the claim of the assessee."

4. Learned Additional Government Pleader (Taxes) also does not dispute the legal position. Since the impugned assessment order is only with regard to the reversal of Input Tax Credit, that too, solely based upon the verification with regard to the vendor, the same could not have been done. In the light of the decision referred supra and for all the above reasons, the petitioner is entitled to succeed and accordingly, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, the connected miscellaneous petition is closed.



Sd/-
Assistant Registrar
Dated:23.3.15

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Ayyanavaram Assessment Circle,
7th Floor, Dowlath Towers,
Taylors Road, Chennai - 10.

+1 cc to Mr.R.Kumar, Advocate,SR.13932.

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