IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.7111, 7112, 7113 and 7114 of 2015
and
M.P.Nos.1, 1, 1 and 1 of 2015

S.K.Electricals
represented by Abishek Fomra,
Partner,
No.220, (Old No.137),
Govindappa Naicken Street,
Chennai - 600 001. ... Petitioner in all W.Ps.

vs.

The Assistant Commissioner (CT) (FAC),
NSC Bose Road Assessment Circle,
48/39, Rajaji Salai,
Wavoo Mansion 2nd Floor,
Chennai - 600 001. ... Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent herein in TIN:33740260372/2009-10, TIN:33740260372/2010-11, TIN:33740260372/2011-12 and TIN:33740260372/2012-13 dated 10.02.2015 and quashing the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader (Taxes)

O R D E R

Petitioner has filed these Writ Petitions seeking to quash the orders of the respondent in TIN:33740260372/2009-10, TIN:33740260372/ 2010-11, TIN:33740260372/2011-12 and TIN:33740260372/ 2012-13 dated 10.02.2015.

2. Heard learned counsel for petitioner and learned Additional Government Pleader (Taxes).

3. Learned counsel for petitioner submits that the petitioner is a Partnership Firm and challenges the orders of the respondent in respect of the assessment years 2009-10, 2010-11, 2011-12 and 2012-13. The subject matter of the writ petitions involves

endeavour by the respondent to reverse input tax credit by placing reliance on Section 19(20) of the Value Added Tax Act, 2006 (hereinafter referred to as 'Act 2006'). The question of reversal of input tax credit under section 19(20) of the Act 2006 will arise where the purchase price is higher than the sale price. Learned counsel further submits that in the course of inspection, the petitioner submitted a letter dated 12.06.2014 addressed to the Deputy Commissioner, Enforcement (North), Chennai, explaining about the fact that the sale price was higher than the purchase price and therefore, Section 19(20) of the Act 2006 will have no applicability to the facts of this case. In the course of assessment also, the petitioner submitted a reply dated 23.01.2015 explaining this factual position and sought for personal hearing. However, without considering the request of the petitioner and without affording an opportunity of personal hearing, which is necessary to demonstrate that the sale price was higher than the purchase price and hence, section 19(20) of the Act 2006 will not be applicable to their case, the respondent has passed the impugned orders. Hence, the impugned orders of the respondent suffer from error of law on the face of the record and are in violation of the rules of natural justice. In support of his contention that opportunity of personal hearing was not given, learned counsel for petitioner also drew the attention of this Court to the various documents and typed set of papers including original notice dated 04.12.2014 and revised notice dated 30.12.2014.

4. Learned Additional Government Pleader (Taxes) submits that the petitioner cannot contend before this Court that the respondent has overlooked his objection and has not considered the fact that sale price was higher than the purchase price, since these are all question of fact and the same got to be agitated before the appellate authority. The other contention of the petitioner that opportunity of personal hearing has not been afforded is not sustainable since both in the original notice dated 04.12.2014 and in the revised notice dated 30.12.2014, it has been clearly mentioned that it would be open to the petitioner to appear on any working day within 15 days from the date of receipt of the notice at 11.30 a.m. and the petitioner failed to avail the opportunity.

5. The relevant portion of the revised notice dated 30.12.2014 is extracted below:

> “Objections, if any to the proposal may be filed in writing along with connected records before the undersigned within 15 days from the date of receipt of this notice. Besides, they are also given an opportunity of being heard in person by the undersigned at his office at 11.30 AM on any working day within 15 days from the date of receipt of this notice, failing which final order as proposed above will be passed.”

6. The submission of learned counsel for petitioner that the petitioner is liable to pay only Rs.24 lakhs, that the petitioner

is willing to deposit such sum without prejudice to his contention and the matter may be heard by the appellate authority cannot be accepted, since these are all question of facts which are to be decided by the appellate authority. As sufficient opportunity has been given to the petitioner for personal hearing, this Court does not find any prima facie error with regard to violation of principles of natural justice and hence, this Court is not inclined to interfere with the impugned orders under challenge.

7. These Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed. It is open to the petitioner to challenge the impugned orders before the appellate authority, if so advised.

Registry is directed to return the original orders to the learned counsel for petitioner as the petitioner has filed a copy of the same in the typed set of papers.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

The Assistant Commissioner (CT) (FAC),
NSC Bose Road Assessment Circle,
48/39, Rajaji Salai,
Wavoo Mansion 2nd Floor,
Chennai - 600 001.

Copy to:The Section Officer, Writ Section,High Court, Madras

The Section Officer, E.R.Section, High Court, Madras.

1 cc to Mr.N.Inbarajan ,Advocate, SR.No.14462
1 cc to Spl Government Pleader,Sr.No144

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ak(co)
pmk.25.3.2015