IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8866 of 2015
and
M.P.No.1 of 2015

M/s.Suryadev Alloys & Power Private Limited,
represented by its Director,
Mr.Pankaj Agarwal,
Survey No.298/2, Gummidipoondi Taluk,
New Gummidipoondi - 601 201. ... Petitioner

vs.

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
38, GNT Road, Second Floor,
Gummidipoondi. ... Respondent

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/33921702760/2009-10 dated 16.02.2015 and quash the same.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.A.N.R.Jayapratap
Additional Government Pleader (Taxes)

O R D E R

Heard Mr.R.Kumar, learned counsel for petitioner and Mr.A.N.R.Jayapratap, 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 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') with TIN No.33921702760. The petitioner is a manufacturer and dealer in M.S.Billets and TMT Bars. The Officials of the Enforcement Wing inspected the place of business of the petitioner during 27.09.2013, 30.09.2013, 03.10.2013 and 04.10.2013 and after verification of the books of accounts, the officials of the Enforcement Wing concluded the inspection. Based on

the report of the Enforcement Wing, the respondent issued a notice dated 21.02.2014 proposing to reverse the Input Tax Credit and also proposing to levy penalty under Section 27 of the Act 2006. The petitioner submitted their objections on 28.04.2014 and requested the respondent to furnish dealer wise purchase turnover. However, without considering the objections of the petitioner, the respondent passed the impugned order. Hence, the present writ petition has been filed.

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

//True Copy//

Sub Assistant Registrar

gm

To
The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
38, GNT Road, Second Floor,
Gummidipoondi.

1 cc to Mr. R.Kumar,Advocate, SR.No.17562
1 cc to Spl.Government Pleader,Sr.No17401

ts(co)
pmk.11.4.2015