BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**09.10.2015**

CORAM

THE HONOURABLE **MR.JUSTICE R.SUBBIAH**

W.P(MD).No.18394 of 2015
and
M.P(MD)No.1 of 2015

M/s.Aravindha Cell Phone,
Rep. By its Proprietor K.Veerakumar ...Petitioner

Vs.

The Assistant Commissioner(CT)-V,
Commercial Tax Buildings,
Dindigul. ...Respondent

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN No.33545381597/2014-15, dated 31.08.2015 and quash the same and further direct the respondent to pass assessment order afresh by considering the relevant records and thereafter to pass order afresh with regard to the reversal of Input Tax Credit in terms of the decisions of this Honourable Court reported in 50 VST 179, 59 VST 256, 60 VST 283 & 82 VST 457 after affording an opportunity of being heard to the petitioner as contemplated under Section 27(4) of the Tamil Nadu Value Added Tax Act.

For Petitioner : Mr.S.Karunakar
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN No.33545381597/2014-15, dated 31.08.2015 and quash the same and further direct the respondent to pass assessment order afresh by considering the relevant records and thereafter to pass order afresh with regard to the reversal of Input Tax Credit in terms of the decisions of this Honourable Court reported in 50 VST 179, 59 VST 256, 60 VST 283 & 82 VST 457 after affording an opportunity of being heard to the petitioner as contemplated under Section 27(4) of the Tamil Nadu Value Added Tax Act.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondent.

3. By consent, the Writ Petition itself is taken up for final disposal.

4.The case of the petitioner Concern is that they are the dealer in Cell phones and its accessories and an assessee on the file of the respondent holding TIN No.33545381597 under the provisions of the Tamil Nadu Value Added Tax Act 2006 and they are regularly filing the monthly returns and claiming input tax credit against the genuine purchases effected from registered dealer within the State as per Section 19(2) of the Act. The entire purchases are covered by necessary invoices. While the matter stood thus, the respondent had issued notice in TIN.33545381597/2014-15, dated 03.08.2015 by stating that from verification of purchase details, it was found that the petitioner had reported their purchases very less than the actual purchase (Purchase suppression of Rs.20,88,311/-) and proposed to levy penalty of Rs.3,48,226/- under Section 27(3) of the TNVAT Act. After receiving notice, due to family circumstances, the petitioners were not able to file a reply to the said notice. Moreover, it is the specific case of the petitioners that they have effected purchase of goods only from registered dealers within the State and all the purchases were covered by valid tax invoices as required under Section 19(10-a) of the TNVAT Act along with the purchase bills and other records to prove the fact that there was no wrong claim of Input Tax Credit. But, to the shock and surprise, the respondent had issued the impugned order dated 31.08.2015 confirming his proposal without any justification. On receipt of the said order, the petitioners had rushed to the respondent to enquire about the issuance of the impugned order. But the respondent had expressed his inability to review the impugned order. It is the further case of the petitioner that the impugned order has been passed on 31.08.2015 directly under Section 27 of the TNVAT Act, which is highly illegal. As per the provisions of Section 22(2) of the TNVAT Act, if an order is not passed before the 31st day of October of the succeeding year by accepting the returns submitted by a dealer, then he is deemed to have been assessed on 31.10.2015 for the assessment year 2014-15. The respondent has not issued any order under Section 22(2) of the TNVAT Act and hence, the petitioner cannot be deemed to have been assessed under Section 22(2) of the Act before 31.10.2015 and therefore, the impugned order passed by the respondent, invoking Section 27 of the Act, is bad in law. Hence, the petitioners have come forward with the present Writ Petition for the above stated relief.

5. When the matter is taken up for hearing, the learned counsel appearing for the petitioner Concern submitted that the

petitioners have effected purchase of goods only from registered dealers within the State and all the purchases were covered by valid tax invoices as required under Section 19(10-a) of the TNVAT Act along with the purchase bills and other records to prove the fact that there was no wrong claim of Input Tax Credit and they are prepared to produce all the invoices before the respondent. He further submitted that by setting aside the impugned order, the matter may be remitted back to the respondent with a direction to consider the petitioner's case afresh.

6. The learned Additional Government Pleader objected for the same.

7. Considering the facts and circumstances of the case, this Court passes the following order:-

> The petitioner firm is directed to remit 20% of the disputed tax in question to the respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petition shall stand set aside and the respondent is directed to provide an opportunity of personal hearing and pass appropriate orders, on merits and in accordance with law, within a period of four weeks, thereafter.

With the above direction, this Writ Petitions stand disposed of. No costs, consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

pm

To
The Assistant Commissioner(CT)-V,
Commercial Tax Buildings,
Dindigul.

+1cc to MR.S.Karunakar, Advocate Sr NO.60719

W.P(MD).No.18394 of 2015
09.10.2015

rg.19.10.2015/SK/SKN/SAR-II 3P/3C.