IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.1261 of 2016
and
WMP.No.996 of 2016

J.J.Anandakumar ... Petitioner

Vs.

The Commercial Tax Officer
Gudiyatham (East) Assessment Circle
Gudiyatham, Vellore District. ... Respondent

Prayer:-
Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari to call for the records of the respondent in his proceedings in TIN No.33934242360/2012-2013 dated 13.11.2015 and quash the same as illegal and pass further orders.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader (Tax)

O R D E R

The challenge in this Writ Petition is to the proceedings of the respondent, dated 13.11.2015, bearing TIN No.33934242360/2012-2013, whereby and whereupon, the petitioner's claim for Input Tax Credit has been disallowed.

2. The petitioner is an assessee on the files of the respondent. For the assessment year 2012-13, the petitioner filed his monthly returns, reporting a total and taxable turnover of Rs.2,34,78,645/- and Rs.1,07,73,470/- respectively under TNVAT Act. Pertaining to the said turnover, the

respondent issued a notice, dated 01.09.2015, proposing to disallow the ITC claimed by the petitioner, on the ground that the petitioner/dealer has not filed any proof for having filed the returns in time, and there was also addition of freight charges and 10% additional tax towards the defects and gross profit on the net purchase value, as per the trading account maintained by the petitioner. The petitioner filed his reply/objection, dated 14.09.2015, stating that, there was no purchase or sales commission, hence, addition of 10% is arbitrary, and that, the petitioner was not having any acknowledgment for filing the return, requested the respondent to verify the returns already filed in their Office and requested to allow ITC claimed by him. The respondent, without considering the objection filed by the petitioner in its proper perspective, by the impugned order, dated 13.11.2015, confirmed the proposal made in the notice, dated 01.09.2015. Challenging the same, the present Writ Petition is filed.

3. Heard both sides.

4. At the time, when this Writ Petition was entertained, i.e., on 12.01.2016, since it was pleaded by the learned counsel appearing for the petitioner, that the petitioner is in possession of all required documents to defend his claim, and, if the petitioner is granted an opportunity, the same would be produced before the respondent, this Court directed the petitioner to appear before the respondent on 19.01.2016, and to produce all the documents in support of his claim before the respondent. Accordingly, the petitioner appeared before the respondent on the said date, and produced all supportive documents, and the same were also received by the respondent, as evidenced by acknowledgment/proof for submission of accounts, filed by the learned counsel appearing for the petitioner today, wherein, an endorsement was made by the respondent in the bottom of the petitioner's letter, dated 19.01.2016, addressed to the respondent.

5. In view of the above, this Court is of the view that the impugned order has to be set aside and the matter has to be remitted before the respondent for fresh consideration based on the documents recently filed before him. Accordingly, the Writ Petition is allowed and the impugned order, dated 13.11.2015 is set aside, and the matter is remitted to the respondent/assessing authority, who is directed to look into to the documents filed by the petitioner on 19.01.2016, as well as the objection, which is stated to have already been filed by the petitioner, and after affording due opportunity of hearing to the petitioner, pass necessary orders on merits and in accordance with law, within a period of six weeks from the date

of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sd

To

The Commercial Tax Officer
Gudiyatham (East) Assessment Circle
Gudiyatham, Vellore District.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.4374
+1cc to the Government Pleader, S.R.No.4557

W.P.No.1261 of 2016

LRS(CO)
CA(19/02/2016)