IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17458 and 17459 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s.Bhandari Steel Ltd.,
represented by its Director,
No.27, Mookar Nallamuthu Street,
Chennai-600 001. .. Petitioner in both writ petitions

Vs.

The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai-600 001. .. Respondent in both writ petitions

Both these writ petitions are filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the impugned proceedings of the respondent in TIN/33170060914/2013-2014 and TIN/33170060914/2014-2015 and quash the impugned orders dated 15.5.2015 as passed contrary to the principles of natural justice and also contrary to the judgment of the Hon'ble Supreme Court in the case of the State of Maharashtra Vs. Suresh Trading Company reported in 109 STC 439 and the Madras High Court in the case of M/s.Jinasanan Distributors Vs. Commercial Tax Officer (CT), Chintaripet Assessment Circle reported in 59 VST 256, in the case of M/s.Althaf Shoes (P) Ltd. reported in 50 VST 179, in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283.

For Petitioner : Mr.P.Rajkumar in both W.Ps.

For Respondent : Mr.Manokaran Sundaram, AGP in both W.Ps.

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader, appearing for the respondent. With the consent of either side, both writ petitions are taken up for final disposal.

2 The petitioner is a dealer in Iron and Steel, Ferrous and non-ferrous metals and is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act).

3 The orders impugned in these writ petitions are the revised assessment orders for the years 2013-14 and 2014-15, in and by which, the input tax credit availed by the petitioner has been directed to be reversed, apart from levying penalty. The only ground on which the input tax credit was reversed is on account of the fact that the petitioner's vendor's registration certificate has been cancelled by their assessing officer.

4 The learned counsel for the petitioner submits that as against the cancellation of the registration certificate of the petitioner's vendor, namely, M/s.D.R.Metals, they had filed a revision petition before the Joint Commissioner (CT), Chennai (North) Division in R.P.No.2 of 2014 and the Joint Commissioner, by order dated 30.6.2014, has held that the registering authority has cancelled the registration of the said M/s.D.R.Metals for non-availability at the place of business and that the facts as to whether the petitioner actually exists at the place of business, whether the business transactions are actually carried on by them at the said place of business and whether such transactions are genuine, are verifiable only by the registering authority and therefore, the matter has been remanded to the registering authority to verify the above facts and to restore the TIN if the conditions and provisions of the Act are complied with.

5 Now the matter has been sent back to the assessing authority of the said M/s.D.R.Metals, i.e., Assistant Commissioner (CT), Harbour (V), Assessment Circle, Chennai. Since the matter is pending consideration of the said assessing authority and at the relevant point of time, when the impugned orders of assessment were passed, the revision was pending, the respondent could have awaited the decision of the revisional authority. However, an observation has been made that the position was verified with the departmental sources and it was found that the registration certificate of M/s.D.R.Metals is not in the position of restoration. It is not known as to how the respondent could have made such an observation and the source of such information has not been made known in the impugned orders. Therefore, the only course to be adopted is to set aside the impugned proceedings and to keep the show cause notices issued to the petitioner alive to empower the respondent to proceed further after a decision is taken with regard to the registration certificate of M/s.D.R.Metals.

6 In the light of the above, both writ petitions are partly allowed and the impugned assessment orders are set aside. The show cause notices dated 31.10.2014, 26.12.2014 and 12.2.2015 issued for both assessment years, i.e., 2013-14 and 2014-15, are restored to the file of the respondent and the respondent is directed to proceed further with the matter after notice to the petitioner after a decision is taken by the Assistant Commissioner (CT), Harbour(V) Assessment Circle, Chennai on the issue pertaining to the registration certificate of M/s.D.R.Metals. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

vvk

To

The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai-600 001.

1 cc to M/s.P. Rajkumar, Advocate, Sr. 32257
1 cc to Spl.Government Pleader, (Taxes), Sr. 32584

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PPA (CO)
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