IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2016

C O R A M

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

W.P.No.17670 of 2016
and
W.M.P.No.15361 of 2016

M/s.Rajalakshmi Paper Agencies
Rep. By its Proprietor Mr.P.Rajesh
46/6, Malaya Perumal Street,
Chennai - 600 001. ... Petitioner

Vs

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

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent pursuant to his proceedings in TIN No.33320200463/2013-14 (D-31) dated 28.03.2016 served on 4.4.2016 and quash the same as invalid and illegal and direct the respondent to implement the circular issued by the Commissioner of Commercial Taxes, Chennai in Circular No.29/15 D3/22678/2015 dated 11.08.2015.

For petitioner ... Mr.S.Mohan

For respondent ... Mr.S.Kanmani Annamalai

Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent and with their consent, the writ petition is taken up for final disposal.

2.The petitioner, who is a registered dealer under the Provisions of the Tamil Nadu Value Added Tax Act, 2006, has questioned the revised proceedings of the respondent in revising the assessment for the year 2013-2014.

3.The petitioner was issued a notice by the respondent dated 14.01.2016. In the notice, it was stated that on verification of Form WW, the dealer had received discount for Rs.93,58,546.00 under the TNVAT Act, 2006 for the year 2013-2014 and the discount received other liable for reversal of ITC under Section 19(20) of the Act. Hence, the ITC was reversed and the petitioner was granted seven days time to submit his objections. The petitioner submitted their objections on 27.01.2016 pointing out that the rate of tax for the product is 5% and not 14.5% as they are dealing in paper and paper board items. But it has been wrongly mentioned as 14.5% in the show cause notice. Further, it is stated that the entire amount as mentioned in the notice is not related to sales and it was not taxable under ITC reversal under Section 19(20) of the Act. Further, it was pointed out that the entire purchases were made from both interstate and local purchases. With these facts, the petitioner prayed for dropping the proceedings.

4.The respondent, without affording an opportunity of personal hearing and without assigning any reasons, has passed the impugned proceedings rejecting the petitioner's contentions. At the first instance, it has to be pointed out that the show cause notice is bereft of particulars. Therefore, the petitioner had been denied an effective opportunity to submit his objections in detail. However, the petitioner had submitted his objections on 27.01.2016 after which the respondent ought to have afforded an opportunity of personal hearing to the petitioner in which the officer should have examined the records that the petitioner may produce.

5.The learned counsel for the petitioner brought to the attention of this Court a circular issued by the Principal Secretary/Commissioner of Commercial Taxes dated 11.08.2015 and pointed out that the provisions of Section 19(20) will extend only to reversal of excess ITC and if there is a case of selling at a price abnormally below prevailing market price, the provisions of 24 of the Act have to be invoked by the assessing authorities taking into account concrete evidence available to such effect. Therefore, it is the submission that the assessing authority failed to take note of directives issued by the Commissioner of Commercial Taxes in the said circular. On a perusal of the impugned proceedings, it is evidently clear that no proper reasons have been assigned to reject the case of the petitioner and a cryptic order has been passed that too without affording an opportunity of personal hearing. Hence, for the above reasons, the impugned order is liable to be set aside.

6.Accordingly, the Writ Petition is allowed. The impugned order is quashed. The matter is remanded for fresh consideration to the respondent, who shall afford an opportunity of personal hearing to the petitioner, peruse all documents and thereafter pass a reasoned order on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sgl

To

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

+1cc to Mr.S. Mohan, Advocate, S.R.No.29372

+1cc to the Government Pleader, S.R.No.29565

IVJ(CO)
EU(29/06/2016)

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