IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:05.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25963/2015 & MP.No.1/2015

M/s.Kalanjiam Sanitary
rep.by its Partner
Mr.Nalla Mohamed Kassim .. Petitioner

Vs.

The Assistant Commissioner [CT]
Broadway Assessment Circle
No.109, Thambu Chetty Street
Chennai 600 001. .. Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari calling for the records of the respondent in TIN 33070041569/2014-15, quash the impugned order dated 31.07.2015.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.S.Manohar Sundaram, AGP [T]

ORDER

Heard the submissions of Mr.V.Sundareswaran, learned counsel for the petitioner and Mr. S.Manohar Sundaram, learned Additional Government Pleader [Taxes] appearing for the respondent and with their consent, the main writ petition itself is taken up for final disposal.

2.The petitioner is a registered dealer on the file of the respondent Department since 01.04.2014 and the petitioner has filed the present writ petition challenging the order of Assessment for the year 2014-15 under the provisions of the Tamil Nadu Value Added Tax, 2006. The petitioner is a small time dealer, dealing in sanitary wares and fittings. Notice was issued on 09.07.2015 stating that on verification of the monthly return filed by the petitioner for the period from April 2014 to January 2015, the petitioner had claimed huge ITC of Rs.,00,688/- and therefore, the petitioner was directed to produce certain details such as Purchase Bills/Sale Bills, Purchase/Sale Register, Bank Statement, Cheque Paid Details, Proof of movement of goods for purchase/sales, Stock Register, Day Book, Proof for mode of payment to the goods movement, ITC

Adjustment Register and Form JJ / Delivery Note etc. The petitioner was requested to produce the above details by appearing in person and the petitioner has appeared in person on 30.04.2015 and produced all the details. After having been fully satisfied with the documents produced, the Assessing Officer observed that the petitioner has not produced proof for movement of goods. The Assessing Officer opined that the goods had been transported through proper transport vehicles, payment for such transportation such as Lorry receipt, mode of payment for transport, etc., has not been produced and therefore, he proposed to direct the petitioner to reverse the Inability Tax Credit availed. The petitioner was given time to file his objection.

3.The petitioner filed a detailed objection pointing out that they are small time dealers and the movement register is not maintained in their course of business and the petitioner does not delivered the materials nor does he engaged himself as a bailor and there is no other allegation of his own and the ITC reversal should not be made on the ground proposed. But, without taking into consideration the said explanation given by the petitioner, the respondent confirmed the proposal in the notice and passed the impugned Assessment Order and on perusal, it is seen that all the documents have been produced by the petitioner and have been listed in the preceding paragraph. However, the only reason for reversing the ITC is by stating that the proof for movement of goods have not been produced and the respondent did not have any material to disbelieve that the petitioner does not acted as a Bailor and his transaction ended with the delivery of the material to be examined in his shop. Therefore, unless and until the respondent had reason to believe that there were no actual and physical delivery of goods by the petitioner's purchasers/sellers, it cannot be a reason for reversing the ITC.

4.Hence on facts, this Court is convinced that the petitioner has established the genuinity of the transaction and the respondent himself was satisfied with the documents produced and the impugned proceedings which emanated out of the Show Cause Notice dated 16.03.2015 appears to be as an after-thought.

5.Accordingly, the writ petition is allowed and the impugned order in TIN 33070041569/2014-15 dated 31.07.2015 is hereby quashed. No costs. Consequently, the connected miscellaneous petition is closed.

Sgl

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

The Assistant Commissioner [CT]
Broadway Assessment Circle
No.109, Thambu Chetty Street
Chennai 600 001.

+1 CC Mr.V.Sundareswaran, Advocate SR.No.38135

+1 CC Spl. GP (T) SR.No.38210

W.P.No.25963/2015

RV [CO]
MSI 10/08/2016