IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.27447 of 2015
and
M.P.No.1 of 2015

Tvl.Rasi Tex (In)Pvt Ltd,
represented by its Managing Director,
S. Senthilnathan,
S.F.No.533/4, Cuddalore Main Road,
Sarvai, Manivilunthan South,
Attur-636 121 .... Petitioner

vs

1. The Commercial Tax Officer (FAC),
   Attur (Town) Assessment Circle,
   Attur

2. The Commercial Tax Officer,
   Attur (Town) Assesment Circle,
   Attur .... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records on the file of the second respondent in TIN No.33903141087/2012-13 dated 23.07.2015 and quash the same.

For petitioner : Mr.R. Senniappan

For respondents : Mr.S. Kanmani Annamalai
Additional Government(T)

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records on the file of the second respondent in TIN No.33903141087/2012-13 dated 23.07.2015 and quash the same.

2. According to the petitioner, the impugned order of assessment, issued by the second respondent is liable to be set aside, as being without jurisdiction and authority of law and contrary to the principles of natural justice. The impugned order of assessment, issued by the second respondent, imposing penalty is not in confirmity with Sec.27(4) of TNVAT Act, 2006, as there was no wrong claim by way of production of false bills and certificates in support of wrong claim. The second respondent also passed the impugned order, imposing penalty without taking into account of the payment made in pursuance of the notice, issued by the first respondent on 28.08.2014.

3. The learned counsel for the petitioner submitted that the petitioner had wrongly availed ITC and subsequently, had paid the entire ITC availed by them. Subsequently, a Notice was issued, which was also withdrawn by the first respondent. Thereafter, the present notice has been issued, levying penalty.

4. Mr.S. Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondents, submitted that the impugned order may be set aside for the reason that the first respondent had already withdrawn the notice issued earlier and thereafter, the present order has been passed, levying penalty on the petitioner. That apart, the learned Additional Government Pleader also submitted that the petitioner had paid the entire ITC, availed by them.

5. Having regard to the submissions made by the learned counsel on either side and taking note of the fact that the Notice, issued by the first respondent, on the earlier occasion, was withdrawn by them and after withdrawal of the Notice, the impugned order was passed, levying penalty on the petitioner, the impugned order dated 23.07.2015 is liable to be set aside and accordingly the same is set aside and the writ petition stands allowed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Commercial Tax Officer (FAC),
   Attur (Town) Assessment Circle,
   Attur

2. The Commercial Tax Officer,
   Attur (Town) Assesment Circle,
   Attur

+1cc to Mr.R. Senniappan, Advocate, S.R.No.15924
+1cc to the Special Government Pleader, S.R.No.15980

KGK(CO)
EU(23/03/2016)

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