In the High Court of Judicature at Madras

Dated : 09.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.19397 and 19398 of 2016
& WMP.Nos.16816 and 16817 of 2016

M/s.Krish Infotech (India)
Pvt. Ltd., rep.by its Director ...Petitioner

Vs

The Assistant Commissioner (CT),
Choolai Assessment Circle,
Greams Road,
Chennai-6. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in his proceedings in TIN No.33980483728/2011-12 and TIN No.33980483728/ 2012-13 respectively and quash the assessment orders dated 29.2.2016.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.S.Manohar Sundaram, AGP

COMMON ORDER

Mr.S.Manohar Sundaram, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petitions are 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 (hereinafter called the TNVAT Act, 2006) and under the provisions of the Central Sales Tax Act, 1956 on the file of the respondent, has filed these writ petitions challenging the orders of assessment dated 29.2.2016 in respect of the assessment years 2011-12 and 2012-13.

3. The petitioner's place of business was inspected by the

Enforcement Wing on 8.11.2012, 9.11.2012, 15.11.2012 and 16.11.2012 and based on such report, the respondent issued a show cause notice dated 15.3.2013. In the said show cause notice, the respondent called upon the petitioner to produce certain records to prove the genuineness of the transaction with a proposal to reverse the input tax credit availed by the petitioner by invoking Section 19(16) of the TNVAT Act, 2006. The petitioner submitted their objections on 20.3.2013. Subsequently, along with the letter dated 21.5.2013, the petitioner enclosed the documents, which were called for. On receipt of the documents, the respondent ought to have granted an opportunity of personal hearing, examined the documents and passed a reasoned order.

4. However, on a perusal of the impugned orders, it is seen that the respondent has only stated that the notice was issued to the petitioner inviting their objections and objections were received and that because of the non filing of the invoice and payment details, the objections were overruled and the proposal made in the show cause notice had been confirmed.

5. So far as the issues, which have been pointed out in the impugned orders are concerned, it is submitted that the grounds mentioned by the respondent in the impugned orders cannot be the basis for reversal of the input tax credit and in this regard, the petitioner placed reliance on the decisions of this Court in the case of Jinsasan Distributors Vs. C.T.O., Chindadripet Assessment Circle [(2013) 59 VST 256] and in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) [(2013) 60 VST 283]. The specific case of the petitioner is that all the documents were submitted as early as 19.10.2013 and it appears that on account of the re-organization of the jurisdiction and the transfer of the jurisdiction to the respondent, the records were not taken into consideration.

6. Considering the facts and circumstances of the case, this Court is of the view that the petitioner should be afforded one more opportunity to place all documents before the respondent.

7. Hence, for such a reasoning alone, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent and the show cause notices are restored to file. The respondent shall consider the objections given by the petitioner along with the documents and after affording an opportunity, the respondent shall pass a reasoned order on merits and in accordance with law. It is open to the petitioner to place the decisions of this Court, on which, they place reliance and those decisions also shall be

taken note of by the respondent, while passing the orders of assessment. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//
Sub Assistant Registrar

To
The Assistant Commissioner (CT), Choolai Assessment Circle, Chennai-6.

1 cc to Special Government Pleader (Taxes), sr.31271
1 cc to M/s.P.V.Sudakar, Advocate, sr.31172

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rsi co
kra 24.06.2016