IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29884 and 29885 of 2015 &
M.P.Nos.1 & 1 of 2015

1 M/s.Global Infratech & Finance Ltd. [PETITIONER]
Rep. by its Director

Vs

1 The Assistant Commissioner(CT)
Egmore Assessment Circle
No.88 Mayor Ramanathan Road
Chetpet Chennai-600 031.
[RESPONDENT]

Common Prayer : The Writ Petitions are filed under Article 226 of the Constitution of India, seeking for Writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33670443013/ 2013-2014 & TIN/33670443013/ 2014-2015 dated 15.07.2015 and quash the same as passed contrary to section 19(1) of the TNVAT Act read with Rule 10 (2) of the TNVAT Rules, contrary to the law laid down by this Court in the decisions in the case of M/s.Althaf Shoes (P) Ltd Reported in 50 VST 179 and also contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.V.Haribabu
Addl.Government Pleader

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned Counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader appearing on behalf of the respondent and with the consent of learned counsel appearing on either side, these 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, has challenged the orders of assessment dated 15.07.2015 for the assessment years 2013-14 and 2014-15.

3.The only ground on which the orders have been challenged is by contending that orders have been passed on a totally different ground, than what has been stated in the show cause notices both dated 17.02.2015. The said notices allege that the petitioner has effected purchases from certain dealers, whose names have been given in the notices and the purchases are all in a routine manner and the respondent suspected that they are all Bill Traders and doing business in a circular manner. Therefore, the petitioner is bound to prove that they are not Bill Trader.

4.The petitioner filed their objections on 09.03.2015, pointing out that the observations made in the impugned orders are hypothetical and assumptive and that no assessment can be done on mere assumption and presumption and if there are details available in the investigation file, the petitioner requested that copies of the same may be permitted to be perused to enable them to give a detailed reply. On merits, it was stated that their purchases from suppliers mentioned are genuine, the issuance of certificate of Registration are still in existence, they are filing their monthly returns regularly and paying tax and it is upto the Department to assess such sales made by their suppliers and proposing to deny input tax credit to them, is against law. Further, the petitioner requested permission to cross examine the sellers to elucidate the facts and reality of transaction. Further one more opportunity of personal hearing was also sought for.

5.When an opportunity of personal hearing was granted while finalising the assessment, the respondent stated that the petitioner has not produced any records relating to movement of goods and payment of any loading and unloading charges and proof for payment to the suppliers like copies of Bank statements, to verify the genuiness of the transactions.

6.The learned counsel for the petitioner submitted that at no point of time, those records were called for and in the typed set of papers, the petitioner enclosed the Bank Statements and by relying on those records, it is submitted that all records are available with the petitioner and payment of freight charges are also available with the petitioner and pleaded that one more opportunity may be granted to the petitioner to appear before the respondent to produce all the records.

7.In the light of the above, the Writ Petitions are allowed and the impugned orders are set aside. The petitioner is directed to treat the impugned proceedings as show cause notice, since it has been issued based on materials which were not referred to in the Pre-Assessment Notice dated 17.12.2015. The petitioner is directed to produce those documents within a period of two weeks from the date of receipt of a copy of this order. If there are any further documents required or any clarification required, the respondent shall direct the same to be produced/furnished, after which the assessment shall be completed in accordance with law. As this Court directed the impugned proceedings to be treated as a show cause notice, the question of enforcing the tax computed or levy of penalty does not arise and shall abide by the fresh orders to be passed in terms of the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rpa
To

1 The Assistant Commissioner(CT)
Egmore Assessment Circle
No.88 Mayor Ramanathan Road
Chetpet Chennai-600 031.

1 cc to Mr.P.Rajkumar, Advocate, sr.40684
1 cc to Special Government Pleader, (T), sr.40751

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mpi co
kra 03.08.2016