IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.20544 of 2016
and
W.M.P.No.17646 & 17647 of 2016

M/s.Bombay Light House
Rep by its Partner - Dropati
No.7, Gandhi Road
Vellore - 632 004,
Vellore District. .. Petitioner

..Vs..

The Commercial Tax Officer
Vellore (Rural)
Vellore. .. Respondent

Prayer
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings made in TIN No.332854321886/2012-13 dated 13.05.2016 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Ms.R.Hemalatha

For Respondents: Mr.Manokaran Sundaram, A.G.P.,

ORDER

Heard Ms.R.Hemalatha, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents and with the consent of either side, the writ petition itself is taken up for final disposal.

2.The petitioner who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act) has filed this writ petition challenging the order of assessment for the year 2012-13 which is a revision of assessment in and by which the respondent disallowed the Input Tax Credit. This is the second time the petitioner is before this Court and earlier they filed W.P.No.19025/2015 challenging the revised assessment order dated 26.05.2015.

3.The petitioner contended that the order of assessment was finalized without considering the reply given by the petitioner enclosing the Photostat copies of the invoices with an undertaking to produce the original as and when required. Accepting the stand taken by the petitioner, the writ petition was allowed by an order dated 17.08.2015 and the matter was remanded to the respondent for fresh consideration. Pursuant to the same, the respondent issued a fresh notice dated 02.12.2015 and the petitioner responded to the same by submitting their reply dated 28.12.2015, along with which they enclosed the originals of the purchase bills with copies of the same for perusal and return, two ledger extracts of purchase folio of the ledger, day book and sale ledger and copy of Form-WW. The petitioners further stated that if enquiry is made with the other end dealer, it will clearly prove that the transaction was genuinely done and payment to the parties were made through bank account.

4.In support of the contention, the petitioner placed reliance on the decisions of this Court reported in 60 VST 283 - Sri Vinayaga Agencies v. AC(CT) Vadapalani, 50 VST 179 - Althaf Shoes (P) Ltd., v. AC(CT) Valluvar Kottam, 82 VST 457 - Infinity Wholesale Ltd., v. AC(CT), Koyambedu and some other decisions.

5.The respondent after receipt of the objections, in fact, verbatim extracted the objections in the impugned order and while completing the assessment stated that the petitioner failed to produce the details of bank payments. However, there is nothing on record to show that the respondent called for those details. Therefore, the respondent has committed an error in blaming the petitioner without issuing notice to direct them to produce the details of bank payments.

6.Secondly, the respondent has referred to Section 19(1) and relied upon the second proviso. Admittedly, the second proviso came into effect only on 29.01.2016 and the relevant assessment year in this case is 2012-13. Therefore, the amended Section 19(1) could not have been made applicable to the petitioner's case. Hence, this is the second error committed in the impugned order.

7.Thirdly, reliance has been placed on the decision of the Delhi High court made in the case of Bihar Fibres Pvt. Ltd., v. Commissioner of VAT, 2015 84 VST 570. The said decision arose in a totally different circumstances while considering a matter arising under the Central Sales Tax Act and finding has been rendered considering the facts of the said case. Therefore, the said decision could not have been relied on by the respondent to negative the case of the petitioner. This is the third error in the impugned order.

8.Further, the respondent has relied upon the decision in the case of M/s.Bharat Steels vs. Commercial Tax Officer, 2015-16 (21) TNCTJ 76. This decision fully supports the case of the petitioner and it is not known as to how the respondent has relied on the said decision to negative the case of the petitioner. This is the fourth error committed in the impugned order.

9.Apart from the four errors pointed out, the respondent has stated that the dealer has not come forward with any evidence for tax payment at the other end. In fact the dealer has no obligation to do such a thing. But in the instant case, the petitioner/dealer requested the respondent to enquire with the other end dealer and if enquiry is made, it will prove that the transaction is genuine. The petitioner offered to produce their bank statements to show that the payments were effected to the other end dealer through banking channel. However, those details were not called for.

10.Apart from all the above defects, had the respondent provided an opportunity of personal hearing by clearly specifying as to what records the petitioner should produce, the mistakes pointed out would not have occurred and the matter would have concluded with the respondent himself.

11.Hence, for all the above reasons, the writ petition is allowed and the impugned order is quashed. The matter is remanded to the respondent for fresh consideration, who shall issue notice to the petitioner calling upon him to produce the required document and thereafter, redo the assessment in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer
Vellore (Rural)
Vellore.

+1 cc to Mrs.Hemalatha Advocate sr.42997
+1 cc to Special Government Pleader sr.43245

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aa18/08/2016