IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.35265 of 2015 &
M.P.No.1 of 2015

M/s.Farwood Industries Limited
Rep by the Managing Director
No 2/546 East Coast Road
Neelankari Chennai-41. .. Petitioner

v.

Assistant Commissioner (CT)
Sholinganallur Assessment Circle
Chennai-600 096. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings of the assessment order in TIN No. 33020920465/2013-14 dated 22.09.2015 and quash this assessment proceedings as illegal and direct the respondent to pass fresh orders by following the principle of law laid down by the orders of the Division Bench of the Supreme Court in 109 STC 439 (SC) after giving personal hearing.

For Petitioner : Mr.C.Baktha Sironmoni

For Respondent : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records of the respondent in his proceedings of the assessment order in TIN No.33020920465 for the assessment year 2013-14, dated 22.09.2015, to quash the assessment proceedings as illegal and direct the respondent to pass fresh orders by following the principle of law laid down by the orders of the Division Bench of the Supreme Court reported in [1998] 109 STC 439 (SC) [State of Maharashtra v. Suresh Trading Company] after giving personal hearing.

2. Mr.C.Baktha Sironmoni, learned counsel appearing for the petitioner, submitted that the the issue involved in the present writ petition is covered by the decision of the Hon'ble Supreme Court reported in [1998] 109 STC 439 (SC) [cited

supra] wherein, the Hon'ble Supreme Court held that retrospective cancellation date should not be adopted, while disallowing the purchases effected by the purchasing dealer. Further, the learned counsel submitted that by adopting earlier retrospective date of cancellation of registration of the vendor the input tax credit claim cannot be denied. The actual date of cancellation of registration of the seller, viz., M/s.Rajalakshmi Enterprises (TIN 33270041556) Broadway Assessment Circle and M/s.Trisla Trade Wings (TIN 33280021714) Harbour Assessment Circle was only on 30.09.2015 and 09.06.2015, which is subsequent to the date of purchases by the petitioner. The respondent has disallowed the input tax credit for the purchases effected from the above sellers for the month March 2014. Therefore, according to the petitioner, the levy of tax by the respondent by adopting the retrospective date of cancellation of registration on 23.09.2013 and 19.08.2013 is not correct.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent, submitted that the petitioner may be directed to file their objections before the respondent and the respondent may be directed to decide the matter afresh, after considering the objections filed by the petitioner.

4. Having regard to the submissions made by the learned counsel on either side, I am of the view that the contentions now raised in the writ petition can be adjudicated by the petitioner before the respondent by filing objections before the respondent and in such an event, the respondent can decide the matter afresh.

5. Accordingly, impugned order dated 22.09.2015 is set aside and the matter is remitted back to the respondent for fresh consideration. The petitioner is permitted to file their objections before the respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of such filing, the respondent is directed to consider the objections filed by the petitioner and decide the matter afresh, after giving due opportunity of personal hearing to the petitioner, on merits and in accordance with law.

With these observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Rj

To

The Assistant Commissioner (CT)
Sholinganallur Assessment Circle
Chennai-600 096.

+ 1 cc to Special Government Pleader Sr.13399

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SKV(CO)
Eu 15.03.16