IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.38637, 38638 and 38639 of 2015
and
M.P.No.1 of 2015 (3 in Nos.)

M/s Chetna Steel Tubes Pvt Ltd.,
rep by its authorised signatory,
Old No.32, New No.67,
Sembudoss Street,
Chennai - 600 001 .... Petitioner in all the writ petitions

vs

The Assistant Commissioner, (CT),
Broadway Assessment Circle,
Chennai - 600 001 .... Respondent in all the writ petitions

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue Writs of Certiorari to call for the records of the respondent in TIN No.33060061217/2010-11 (in respect of WP No.38637 of 2015); 33060061217/2011-12 (in respect of WP No.38638 of 2015) and 33060061217/2012-13 (in respect of WP No.38639 of 2015) dated 15.09.2015 and quash the same.

For petitioner : Mr.Ms.C. Rekha Kumari

For respondents : Mr.S. Kanmani Annamalai
AGP

COMMON ORDER

The petitioner has filed the above writ petitions to issue Writs of Certiorari to call for the records of the respondent in TIN Nos.33060061217/2010-11 (in respect of WP No.38637 of 2015); 33060061217/2011-12 (in respect of WP No.38638 of 2015) and 33060061217/2012-13 (in respect of WP No.38639 of 2015) signed on 15.09.2015 and quash the same.

2. It is the case of the petitioner that for the above said Assessment Years, the respondent had issued the revision notice, proposing to reverse ITC on burning loss, receipt of discount and penalty under Sec.27 of TNVAT Act. Though the petitioner had filed a detailed reply stating that the reversal

of ITC is disproportionate to the facts of the case and law, the respondent confirmed the proposal, by reversing ITC alone and no penalty was levied in the revised order dated 26.12.2014. As against the order dated 26.12.2014, the petitioner filed an appeal against the reversal of ITC before the Appellate Deputy Commissioner (CT) North and obtained stay for collection of tax. During the pendency of the appeal, the respondent passed the impugned orders dated 15.09.2015, by levying penalty on the ground that there is an error apparent on the face of the order dated 26.12.2014.

3. It is pertinent to note that before passing the impugned orders, the respondent had not issued any notice to the petitioner. On a perusal of Sec.84(1) of TNVAT Act, it could be seen that in case of any enhancement of assessment, a notice and a reasonable opportunity of being heard to be given to the dealer. When the authority has not levied any penalty to the petitioner, in the impugned order dated 26.12.2014, under Sec.84 of the Act, he cannot levy penalty stating that there is an error apparent on the face of the order. The non-levy of penalty cannot be termed as an error apparent on the face of the order.

4. Mr.S. Kanmani Annalamali, learned Additional Government Pleader, appearing for the respondent, fairly submitted that the respondent had not given an opporunity of hearing to the petitioner also.

5. Since the provisions of Sec.84 of the Act cannot be invoked by the respondent for levying penalty, when it is not done at the first instance, the impugned orders dated 15.09.2015 are liable to be set aside and accordingly, the same are set aside and the writ petitions stand allowed. No costs. Consequently, connected Mps are closed.

Sd/-
Assistant Registrar(J)

//True Copy//
Sub Assistant Registrar

sr
To
The Assistant Commissioner, (CT),
Broadway Assessment Circle,
Chennai - 600 001
+1 cc to M/s.C.Rekha Kumari, Advocate, sr.15932
+1 cc to Special Government Pleader, sr.15984

W.P.Nos.38637 to 38639/2015

ppa co
kra 28.03.2016