IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2016

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.39173 of 2015

and MP Nos.1 and 2 of 2015

Jyoti Limited,
rep. by its Authorised Signatory,
No.270, Royapettha Road,
Chennai - 600 014. .. Petitioner

vs.

1. Commercial Tax Officer,
   Royapettah Assessment Circle,
   No.46, Greenways Road,
   Chennai-600 028.

2. Assistant Commissioner,(CT)
   Thiruvottiyur Assessment Circle,
   Chennai.

3. The Branch Manager,
   Bank of Maharashtra,
   Mount Road Branch,
   Anna Salai, Chennai-6. .. Respondents

* * *

Prayer : Writ Petitioner filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent in proceedings, dated 29.07.2015, in TIN 33850782765/2010-11 and quash the same.

* * *

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.S.Kanmani Annamalai,
Special Government Pleader

ORDER

1. By virtue of the present writ petition, challenge has been laid to the order dated 29.07.2015, passed by respondent No.1.

2. Via the impugned order, respondent No.1 has reversed the Input Tax Credit to the extent of Rs.7,47,026/- taken by the petitioner.

2.1. In addition thereto, by the very same order, the petitioner has been directed to pay tax at the rate of 1.25% per month, on the Input Tax Credit Reversal, quantified at Rs.6,19,324/-.

2.2. The reason for reversal of Input Tax Credit, as reflected in the impugned order, is pivoted on the provisions under Section 19(15) of the Tamil Nadu Value Added Tax, 2006 (in short "the 2006 Act").

2.3. In sum, respondent No.1 has reversed the Input Tax Credit for the reason that the registration certificate of the selling dealer stood cancelled.

3. The petitioner avers that it had made purchases from one entity by the name: M/s.Pioneer Steel Corporation, for the year 2011. It is stated that the said entity was, at the relevant point in time, registered as a dealer with Thiruvottiyur Assessment Circle.

3.1. Apparently, the registration of M/s.Pioneer Steel Corporation has been cancelled with retrospective effect, i.e., 07.08.2007.

3.2. I must also note that notices were sent to the petitioner for the purpose of revising the petitioner's assessment, for the Assessment Year 2010-2011, which had already been concluded.

3.3. This revision was proposed, based on, as indicated above, the cancellation of registration of the selling dealer, i.e., M/s.Pioneer Steel Corporation.

3.4. It is the case of the petitioner that these notices were not brought to the management's knowledge by the concerned staff. It is stated that the staff handling such information was an illiterate, and therefore, the receipt of notices issued by the Department could not be escalated to the concerned Officer of the petitioner.

3.5. Notwithstanding the aforesaid, the petitioner's case is that, on merits, the impugned order is not sustainable, in view of the judgment of the Division Bench of this Court in the case of : The Assistant Commissioner (CT), Broadway Assessment Circle, Chennai V. M/s.Bhairav Trading Company, rep. by its Proprietor (WA No.946 of 2013 etc., dated 01.09.2016).

3.6. It is the learned counsel's submission, based on the aforementioned judgment of the Division Bench, that Input Tax Credit cannot be reversed, merely because, selling dealer's registration is cancelled.

4. Learned counsel for the petitioner says that the relevant tax invoices and other documents required to be submitted to claim Input Tax Creditor, as required, under the provisions of Section 19(1) of the 2006 Act read with Rule 10 (2) of the Tamil Nadu Value Added Tax Rules, 2007, were filed with the Department, and therefore, no reversal could have been brought about, based on the aforesaid circumstances, i.e., cancellation of registration of the seling dealer.

5. Learned counsel for the respondents concedes that the aforesaid matter is covered by the judgment of the Division Bench rendered in the case of Bhairav Trading Company.

6. Having regard to the aforesaid circumstances and given the fact that the issue raised in the present writ petition is covered by the judgment of the Division Bench in case of Bhairav Trading Company, this writ petition is allowed.

7.Accordingly, the impugned Assessment Order dated 29.07.2015 is quashed. Consequently, the writ petition along with connected miscellaneous petitions are closed. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Commercial Tax Officer,
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai-600 028.

2. The Assistant Commissioner,
Thiruvottiyur Assessment Circle,
Chennai.

3. The Branch Manager,
Bank of Maharashtra,
Mount Road Branch,
Anna Salai, Chennai-6.

+1 CC to Government Advocate, Sr.No.73050.

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GMI(CO)
KP(06.01.2017)