IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22538 of 2016 &
WMP No.19220 of 2016

Padmavathi Electricals
rep. by its Proprietor
Mr.Deepak Kumar Nahar
Chennai-1 .. Petitioner

Vs

The Commercial Tax Officer,
Esplanade Assessment Circle
Chennai. .. Respondent

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari to call for the records of the respondent in TIN/33960081577/2014-15 dated 18.05.2016, and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.S.Kanmani Annamalai
Addl.Government Pleder (Taxes)

O R D E R

Heard Mr.S.Raveekumar, learned Counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondent and with the consent of learned counsel appearing on either side, this writ petition itself is taken up for final disposal.

2.The petitioner who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006 [TN VAT Act] and Central Sales Tax Act [CST Act], has filed this Writ Petition, challenging the assessment order for the year 2014-15, under the provisions of the CST Act.

3.The only issue to be considered by this Court in the present case is that whether the Input Tax Credit availed by the petitioner is subject to reversal on the grounds stated by the respondent in the impugned assessment order. To consider the said fact, Form WW, filed by the petitioner has to be examined.

4.The respondent referred to Section 19(5)(c) of the TNVAT Act, which states that no input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of interstate trade or commerce falling under the sub-section (2) of Section 8 of the Central Sales Tax Act, 1956, as per the formula and taking into account the sales made under section 8 (2) of the CST Act and that the petitioner has failed to do so even at the time of filing Form W.W.

5.The learned counsel for the petitioner after elaborately referring to the factual matrix of the case, referred to Form WW filed by the petitioner before the Assessing Officer dated 31.03.2015 and pointed out that in the said Form WW, the petitioner has clearly stated that the entire interstate sales are out of interstate purchases and hence no reversal of ITC has been made. The learned counsel also refers to the Profit and Loss Account and pointed out the Sales Account under the CST.

6.As rightly pointed out by the learned Additional Government Pleader, though Form WW and a statement has been made stating that the entire interstate sales were out of interstate purchases only, no supportive documents have been placed by the petitioner to the said statement.

7.Faced with this situation, the learned counsel for the petitioner submitted that one more opportunity may be granted to the petitioner to produce necessary invoices to substantiate the stand taken in Form WW.

8.Considering the facts and circumstances of the case, this Court is of the view that one more opportunity can be granted to the petitioner to substantiate their case by appearing before the respondent, by treating the impugned proceedings as a show cause notice, submit their objections within a period of fifteen days from the date of receipt of a copy of this order and along with the objections, the petitioner should enclose the copies of the records which they propose to rely upon. On receipt of the objections along with the enclosures, the respondent shall afford an opportunity of personal hearing, within a period of two weeks thereafter and during the course of personal hearing, the petitioner should produce necessary original documents (copies of which were enclosed along with the objections) and after hearing the petitioner in person, the respondents shall proceed to conclude the assessment in accordance with law. Since, this Court has directed the impugned assessment order to be treated as show cause notice, till fresh orders are passed the impugned demand shall not be given effect to.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Esplanade Assessment Circle
Chennai.

+1 cc to Mr.S.Raveekumar,advocate,sr.39127

+1 cc to Spl.Govt.pleader,sr.38490.

+1 cc to Govt.Pleader,sr.37153.

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krd 5/8

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