IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:25.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24620 of 2016 and
WMP.No.21027 of 2016

M/s.Sri Ram Cements
Represented by its Managing Partner,
No.23, Sappani Street,
Panruti. .. Petitioner

Vs.

1.The Commercial Tax Officer,
Panruti (Town) Assessment Circle.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the impugned proceedings dated 12.05.2016 of the first respondent in TIN No.33204481527/2013-14 and quash the same as passed contrary to the provisions of the TNVAT Act, contrary to the circulars dated 4.11.2013 and 11.8.2015 issued by the second respondent and also against the order dated 5.8.2015 passed by the Hon'ble Madras High Court in W.A.No.1380 to 1040 of 2015 and the order dated 25.8.2015 passed in W.P.No.25637 of 2015.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.Manokaran Sundaram
Additional Government Pleader

ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader accepts notice on behalf of the respondents. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The petitioner has filed this writ petition challenging the order of assessment dated 12.05.2016 for the year 2013-2014 under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The contention raised by the petitioner were two fold viz., wrong provision of law has been quoted by mentioning Section 19(11) instead of Section 19(20). Secondly, it was submitted that the Assessing Officer did not take note of the circular issued by the Commissioner dated 01.11.2013 wherein it has been clarified the tax shall not be levied on discounts. On these two issues, this Court directed the learned Additional Government Pleader to get instruction in the matter, by order dated 18.07.2016.

3.Today when the matter is heard, the learned Additional Government Pleader has produced written instructions given by the respondent dated 20.07.2016 which is as follows:

> "The issue involved in the present writ petition is whether tax is levied on the discount received?
>
> In the present case, the petitioner suppressed the discount given by the seller. Only on verification of trading and Profit and Loss Account, it is found that the petitioner was given discount by the seller dealer. But ITC was availed for the entire purchase turnover without deducting the discount. When the petitioner received discount from other end, he is not eligible for ITC for the said discount. Therefore, ITC was reversed by the Assessing Officer in the impugned order for the discount given by the selling dealer as contemplated under Section 19(20) of the TNVAT Act. No tax is levied on the discount as stated by the petitioner.
>
> Further, the circulars issued by the Principal Secretary/Commissioner of Commercial Taxes, as referred by the petitioner are not applicable to the present case since no tax is levied on discount as stated by the petitioner."

4.Thus, the Assessing Officer has taken a stand that no tax has been levied on discount and the ITC which has been availed for the entire purchase turnover without deducting the discount has been directed to be reversed.

5.The learned counsel for the petitioner vehemently contended that the respondents ignored the circular issued by the Commissioner dated 04.11.2013 which was taken note by the Hon'ble Division Bench of this Court in the case of M/s.Giant Cement Trading Private Limited and others V. Assistant Commissioner (CT), Chrompet Assessment Circle, Chennai in W.A.Nos.1038 to 1040 of 2015 dated 05.08.2015. Thus, the endeavour of the petitioner is to point out that there is an error apparent on the face of the record of the impugned order.

6.After hearing the learned counsel for the parties, this Court is not inclined to entertain a writ petition, at this juncture, especially in the light of the disputed factual averments set out by the petitioner.

7.Accordingly, the Writ Petition stands disposed of, giving liberty to the petitioner to file a petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, raising all contentions within a period of one week from the date of receipt of a copy of this order. If such petition is filed, the respondent shall pass appropriate orders on merits and in accordance with law within a period of two weeks thereafter, affording an opportunity of personal hearing to the petitioner. Till then, no coercive action shall be initiated for recovering the tax quantified in the impugned proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer,
Panruti (Town) Assessment Circle.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

+1 cc to Spl.Govt.Pleader,sr.42001

+1 cc to Mr.P.Rajkumar, Advocate,sr.41975.

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