IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.7.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.24944 of 2016
&
WMP.No.21316 of 2016

Lakshmi Traders
rep.by its Proprietor
Chennai 81 ... Petitioner

Vs

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
Chennai-81. ... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TIN 33261200178/2013-14 and quash the order dated 10.6.2016 as the same is prima facie contrary to the settled law laid down by the Supreme Court and this Court.

For Petitioner : Mr.Md.Ghafoorur Rahman

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act, 2006) and the Central Sales Tax Act, 1956 (hereinafter referred to as the CST Act, 1956), is before this Court virtually for the second time with the same grievance.

3. The respondent issued a notice dated 12.11.2014 alleging that the petitioner had purchased goods from one M/s.White

Global Enterprises, whose registration has been cancelled and therefore, there was a proposal to reverse the input tax credit, which was claimed by the petitioner as not admissible under Section 19(15) of the TNVAT Act.

4. It is true that the petitioner did not submit their objections to the notice dated 12.11.2014, which resulted in an assessment being framed on 17.4.2015. This was put to challenge before this Court in W.P.No.15466 of 2015. The said writ petition was allowed by an order dated 2.6.2015, after taking into consideration the decision of this Court dated 20.4.2015 made in W.P.Nos.11404 to 11407 of 2015 [M/s.Bhairav Trading Company Vs. Assistant Commissioner (CT), Broadway Assessment Circle, Chennai].

5. The operative portion of the order dated 2.6.2015 made in W.P.No. 15466 of 2015 reads as follows :

> "It is not quite just and lawful to the respondent to pass an order running contrary to the above settled legal position. Therefore, the issue raised in the writ petition definitely warrants interference, hence, the writ petition stands allowed and the impugned order is set aside on the ground that the law laid down by this Court has not been properly followed by the Assessing Officer. Be that as it may, as the ex parte order has been passed, the same is set aside and the matter is remanded to the Assessing Officer to redo the exercise within a period of two months from the date of receipt of a copy of this order."

6. After W.P.No.15466 of 2015 was allowed and a direction was issued to the respondent in the aforementioned terms, the respondent issued another notice dated 27.10.2015 granting the petitioner an opportunity of personal hearing on 30.11.2015 at 3 PM and calling upon the petitioner to file necessary documentary proof on 30.11.2015. The petitioner complied with the said direction and filed their detailed objections on 30.11.2015 along with annexures, which are invoices issued by M/s.White Global Enterprises. These invoices were produced to establish the petitioner's case that the purchases effected from M/s.White Global Enterprises were prior to the cancellation of the registration certificate of the said dealer, which was cancelled by order dated 1.10.2014.

7. Thus, it is clear that the purchases effected by the petitioner were prior to the order dated 1.10.2014. However, the

problem that has arisen is on account of the fact that such cancellation was with retrospective effect from 16.9.2008. In any case, the cancellation has been made on 1.10.2014 and merely because the cancellation order has been given with retrospective effect, it cannot have an impact on the petitioner, especially when there is no document to show that the petitioner is aware of such cancellation on the date on which they had effected purchases. This crucial aspect has been brushed aside by the respondent thereby abdicating the duties of the Assessing Officer. The manner, in which, the impugned order has been passed is wholly unsustainable and illegal.

8. That apart, the decisions referred to by the petitioner in their objections have not been considered by the respondent and the reason given by the respondent that those decisions are for other dealers and that the petitioner is not a party in the said decisions is an arbitrary statement, which clearly shows that the respondent is not capable of understanding as to what is the ratio of the decisions rendered both by this Court as well as the Hon'ble Supreme Court.

9. Accordingly, for all the above reasons, the writ petition is allowed and the impugned order is quashed. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
No.19 & 20, Kummalamman Koil Street,
Chennai-81.

+1cc to Mr.Md.Ghafoorur Rahman, Advocate, S.R.No.40986
+1cc to the Special Government Pleader(T), S.R.No.40610

W.P.No.24944 of 2016
&
WMP.No.21316 of 2016

GR(CO)
CA(02/08/2016)