IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29025 of 2016 &

W.M.P.No.25083 of 2016

M/s.Mariyam Cerationz,
represented by its Partner,
No.165/224, 3rd Floor, Peters Road,
Gopalapuram, Chennai - 600 086. .. Petitioner

Versus

The Assistant Commissioner (CT)
Royapettah Assessment Circle,
Chennai. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari to call for records of the respondent in his proceedings in TIN:33750722135/2014-15, quash the assessment order dated 26.07.2016.

For Petitioner : Mr.R.L.Ramani, SC, for M/s.B.Raveendran

For Respondent : Mrs.Vasudha Thiagarajan, AGP

O R D E R

Heard Mr.R.L.Ramamani, learned Senior Counsel, appearing for the petitioner and Mrs.Vasudha Thiagarajan, learned Additional Government Pleader, appearing for the respondent.

2. The petitioner is a dealer in Gold Jewellery and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter will be referred to as “the TNVAT Act”). In this writ petition, the petitioner challenges the order of assessment, dated 26.07.2016 for the assessment year 2014-15. The place of business of the petitioner was inspected by the Enforcement Officials, who had pointed out certain defects, which resulted in the issuance of a show cause notice dated 31.07.2015.

3. The petitioner submitted their reply to the notice on 24.08.2015 and the respondent, by an order, dated 06.01.2016 confirmed the proposal in the notice dated 31.07.2015. The issue involved was with regard to the mismatch of Input Tax Credit (ITC) claim. The turnover, which was the subject matter of controversy, was Rs.79,12,36,823/- for the assessment year 2014-15. Aggrieved by the same, the petitioner preferred an appeal to the Appellate Deputy Commissioner (CT), Chennai East, in Appeal No.32 of 2016 (VAT). Before the Appellate Authority, the petitioner produced all the related copies of Tax invoices, along with copies of Return Annexures of otherend sellers to the petitioner with payment details in support of the petitioner's claim for Input Tax Credit.

4. The records produced by the petitioner were verified by the Department's representative and found to be correct. This has been recorded by the Appellate Authority, in paragraph 6, of the order. Ultimately, the Appeal was allowed and the order passed by the Assessing Officer / respondent, reversing the Input Tax Credit to the tune of Rs.79,12,370/- was set aside.

5. In the meantime, the respondent issued another notice dated 28.04.2016. This notice also pertains to the same assessment year 2014-15, but for the whole turnover, i.e., the turnover, which was the subject matter of the earlier order, dated 06.01.2016, which was set aside on appeal.

6. The petitioner submitted their objections, referring to the order passed by the Appellate Authority in A.P.No.32 of 2016, which was allowed and pointed out that there is no mismatch and the transaction is also with the same parties. The respondent took note of the objections filed by the petitioner and granted relief to the petitioner to that extent of turnover, namely, Rs.79,12,370/-, but denied the benefit for the remaining turnover and has directed the reversal of the Input Tax Credit claimed by the petitioner. The reason for doing so is by stating that the Revenue proposes to file an Appeal before the tribunal as against the order passed by the Appellate Authority. On the date when the impugned assessment order was passed, the Appeal had not been filed. Therefore, mere proposal to file an appeal would not amount to grant of stay of the order passed by the Appellate Authority. Furthermore, even the pendency of the appeal would not amount to stay. Therefore, if the respondent was of the view that the order of the Appellate Authority requires reconsideration, then he should have kept the assessment proceedings in abeyance, especially when an identical transaction for part of the turnover with the same parties for the same assessment year, was set aside by the Appellate Authority and relief has been granted to the petitioner.

7. Therefore, in my view, the order passed by the respondent, reversing the input tax credit to the tune of Rs.11,66,75,73,862/-, is incorrect. Accordingly, the writ petition stands disposed of and the impugned order stands suspended to the extent wherein it reverses the input tax credit claim to the tune of Rs.11,66,75,738/- and the matter shall be kept in abeyance till the appeal is filed by the Revenue, as against the order passed in A.P.No.32 of 2016. The period of limitation, for filing the appeal, is 60 days and the Appellate Authority has passed the order on 29.04.2016. It is not known as to when the Department received the copy of the order. Therefore, time is granted to the Department to file the appeal, if they choose to do so, within a period of 60 days from today. No costs. Consequently, the connected WMP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pvs/srk

To
The Assistant Commissioner (CT)
Royapettah Assessment Circle,
Chennai.

+1 cc to Mr.B.Raveendran Advocate sr 47484
+1 cc to Special Government Pleader Taxes vide sr 47591

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