IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.32121 of 2016
&
WMP.No.27864 of 2016

Tvl.Renga Engineering Works
[India] Private Ltd., rep.by Director
No.193, Linghi Chetty Street
Chennai. ... Petitioner

Versus

The Assistant Commissioner [CT]
Harbour Assessment Circle. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent in order dated 05.08.2016 in TIN/33590021592/2013-14 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.K.Venkatesh,
Government Advocate [Taxes]

ORDER

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate [taxes] accepting notice on behalf of the respondent and with the consent on either side, the writ petition is taken up for final disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act, 2006]. For the Assessment Year 2013-14, the petitioner was issued with a notice dated 08.07.2016, alleging that in the said order, there is a wrong

availment of Input Tax Credit [ITC]. The reason is that on verification of the website of the dealer, viz., the petitioner, it is revealed that they purchased goods from M/s.AMI Enterprises for the months from January 2014 to March 2014 and claimed ITC. However, in the Annexure-II of the said Selling Dealer, viz., M/s.AMI Enterprises, it was noticed that they have availed NIL Returns, thereby reporting that they have not made any sales to the petitioner. On that ground, the ITC claim of the petitioner was sought to be recovered, apart from imposing to levy penalty u/s.27[4][a] of the TNVAT Act, 2006. The petitioner was given 15 days time to submit his objection and also an opportunity of being heard in person. The petitioner submitted their objections stating that the Selling Dealer, viz., M/s.AMI Enterprises, is a registered dealer under the provisions of TNVAT Act and the petitioner have made payments to them by way of cheques. Further, by referring to section 19 of the TNVAT Act, the petitioner contended that all that they have to do is to prove the purchases by submitting the copies of the bill and they were ready to submit the original purchase bill and produce the same before the respondent for verification. Further, with regard to the allegation that the Selling Dealer, viz., M/s.AMI Enterprises, had filed NIL Return. The petitioner stated that the said Selling Dealer has filed a revised return for the said months and also enclosed copies of the revised returns submitted by the Selling Dealer to his Assessing Officer and the acknowledgment given by the said Assessing Officer for being considered by the respondent.

3. With the above submission, the petitioner prayed for dropping the proposal to reverse the ITC. Though the notice dated 08.07.2016 mentioned that an opportunity of personal hearing will be given to the petitioner, it appears that no specific date was fixed for personal hearing. While completing the assessment, the respondent has recorded the objections given by the petitioner in their reply dated 02.08.2016, however, proceeded to reject the reply on the ground that the revised return filed by the Selling Dealer, viz., M/s.AMI Enterprises, is an after-thought. Therefore, the proposal in the notice dated 08.07.2016 was confirmed.

4. The first mistake done by the respondent is not affording an opportunity of personal hearing, though he had stated that such opportunity will be given in the notice dated 08.07.2016. However, one issue that has to be pointed out is that in the notice dated 08.07.2016, the respondent stated that the petitioner can file objections to the notice and they will be heard in person at his office at 11.30 a.m. on any working days from within 15 days from the date of receipt of the notice. This Court is of the view that the wordings mentioned in the

notice dated 08.07.2016 is not proper since after the objection is received, there may be cases where the Assessing Officer will be fully convinced with the objections and he may even drop the proposal. Therefore, the proper thing for the officer would be to specifically fix the date for personal hearing after receipt of the objections and after going through the same.

5. The second mistake committed by the respondent is that by proposing to reverse the entire ITC availed by the petitioner solely for the reason that the Selling Dealer had filed NIL Return, this Court in several decisions such as Sri Vinayaga Agencies Vs. the Assistant Commissioner [WP.Nos.2036 to 2038/2013 dated 29.01.2013] ; Althaf Shoes [P] Ltd., Vs. Assistant Commissioner [CT], valluvarkottam, Assessment Circle, Chennai reported in [2013] 59 VST 256 [Mad], had held that if the Selling Dealer has not collected tax, that liability has to be fastened on the Selling Dealer. That apart, merely because the Selling Dealer had filed incorrect particulars, will not be a reason to reverse the ITC availed by the Purchasing Dealer. In Infiniti Wholesale Limited Vs. the Assistant Commissioner [CT], [WP.No.9265/2013 dated 06.11.2014], this Court has held that if the Selling Dealer has not filed returns nor paid taxes or they are unregistered Dealers or their registration were retrospectively cancelled, that may not be the grounds to reverse the ITC availed by the Purchasing Dealer. That apart, the need for affording an opportunity of personal hearing has been reiterated by this Court in SRC Projects Vs. Commissioner of Commercial Taxes, reported in 2008-09 [14] TNCTJ 220.

6. The third mistake committed by the respondent is in disbelieving the revised return or rather, summarily rejecting the revised return filed by the Selling Dealer before his Assessing Officer. Admittedly, the respondent is not the Assessing Officer of the Selling Dealer. Therefore, he has no jurisdiction to reject the revised return filed by the Selling Dealer as an after-thought. If at all it can be done only by the Assessing Officer of the Selling Dealer.

7. In the light of the above mentioned inherent differences in the impugned order, the same calls for interference.

8. Accordingly, the writ petition is allowed and the impugned order dated 05.08.2016 in TIN/33590021592/2013-14 is set aside and the matter is remanded to the respondent for fresh consideration who shall ascertain full particulars from the Assessing Officer of the Selling Dealer, viz., M/s.AMI Enterprises, and thereafter, put the petitioner on notice, invite their objections, hear them in person and re-do the

assessment in accordance with law, bearing in mind, the legal principles as mentioned in the preceding paragraphs. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP

To

The Assistant Commissioner [CT]
Harbour Assessment Circle.

+1cc to the Special Government Pleader(T), S.R.No.52373

W.P.No.32121 of 2016

NM(CO)
CA(28/09/2016)