IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32472/2016
&
WMP.No.28170/2016

M/s.GSA Traders
rep.by Authorised Signatory
No.43, School Street, Rangapuram
Vellore 632009. ...Petitioner

..Vs..

The Commercial Tax Officer [Rural]
Vellore Rural Assessment Circle,
Vellore District. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33584324663/2014-15 dated 29.04.2016 and quash the order passed therein as illegal and direct the respondent to pass fresh orders under TNVAT Act after verification of accounts and purchase bills for the year 2014-15 and to provide an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Bakthasironmani

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

O R D E R

Heard Mr.C.Bakthasironmani, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate [Taxes] accepting notice on behalf of the respondent. By consent, the Writ Petition itself is taken up for final disposal.

2 The petitioner, in this writ petition, challenges the impugned Assessment order dated 29.04.2016 for the

Assessment Year 2014-2015 and to direct the respondent to pass orders afresh, after verification of the accounts and purchase bills for the year 2014-15 and to provide an opportunity of personal hearing to the petitioner.

3 In the considered opinion of this Court, the impugned order of Assessment is a clear outcome of non-application of mind and failure on the part of the Assessing Officer to take a pragmatic stand in the issue. The basis for issuing a notice dated 30.09.2015 is on three grounds, viz.,

> "1.You have claimed ITC for Rs.9,89,067.00 for the year 2014-15, but you have not filed any proof of records for availing ITC as per Rule 10 [2] of TNVAT act, 2006.
>
> 2.The huge purchase furnished by you in the monthly return is not tally with the other dealers sales details. In this regard, you are requested to furnish the purchase details by month-wise details and also furnish the IT statement for the year.
>
> 3.The following purchases were reported by you as purchase made from similar TIN No.33584324663 of your concern and ITC was also claimed as below as detailed in the list. In this state, it is hereby proposes to disallow as ineligible ITC."

4 On receipt of the same, the petitioner submitted their reply dated 10.11.2015 stating that they have filed the monthly return in Form-I for the year 2014-15 and mistakenly mentioned the TIN number of the party, viz., M/s.Ultra Tech Cement Limited, Arakonam, and furnished the actual TIN Number. Along with the reply, the petitioner has also enclosed copies of all the purchase bills to their knowledge and requested the respondent to drop the proposal. It appears that the petitioner have also obtained a Certificate from M/s.Ultra Tech Cement Limited, who had certified that they are the registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, and an assessee on the file of the Commercial Tax Officer, Arakonam, Vellore District and they have furnished their TIN number. They further declared that they have collected tax from the petitioner during the period from April 2014 to March 2015 and enclosed the particulars in the form of annexure. The

respondent, while accepting the receipt of the reply along with the certificate, ignored the same, stating that except the letter and annexures, no other record has been produced. However, the respondent, being the Assessing Officer, has to exercise his statutory duty. It enjoins upon him to verify the details and he should not have brushed aside the certificate issued by M/s.Ultra Tech Cement Limited, especially when the certificate contains an annexure giving full details regarding the buyer [petitioner herein], TIN number, commodity code, invoice number, invoice date, sales value, tax rate and the amount of VAT paid and the category. Thus, this is a case where the respondent has abdicated his statutory duties. Hence, on this sole reason, the impugned order calls for interference.

5 Accordingly, the writ petition is allowed and the impugned order of assessment dated 29.04.2016 in TIN.No.33584324663/2014-15 is set aside and the matter is remanded to the respondent for fresh consideration, who shall cause appropriate verification from the Commercial Tax Officer, Arakonam, Vellore District, on whose file, M/s.Ultra Tech Cement Limited, is registered as a Dealer and after causing proper verification, afford an opportunity of personal hearing to the petitioner and re-do the assessment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

AP

To

The Commercial Tax Officer [Rural]
Vellore Rural Assessment Circle,
Vellore District.

1 CC to Mr.C.Bakthasironmani, Advocate, SR. 52661

1 CC to Spl. Government Pleader (T), SR 52714

W.P.No.32472/2016

ALA (CO)
PSI 06/10/2016