In the High Court of Judicature at Madras

Dated : 20.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.36711 of 2016
& WMP.Nos.31554 & 31555 of 2016

M/s.Sri Krishna Enterprises rep.by
its Partner K.K.Bhoopeshkumar ...Petitioner

Vs

The Commercial Tax Officer, Chithode
Circle, Erode, Erode District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in his impugned proceedings made in TIN No.33873064134/ 2011-12 dated 1.8.2016 and quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner has challenged an order passed by the first respondent, who is an Assessing Officer of the petitioner,

reversing the input tax credit availed by the petitioner on the ground that they effected purchases from a bogus dealer namely M/s.Allied Indo Marketters, Trichy.

3. Admittedly, the petitioner did not submit any objections to the notices issued by the respondent calling upon the petitioner to submit their objections. After the impugned order has been passed, the petitioner has become wiser and has now rushed to this Court stating that on the date when they effected purchases from the said dealer, the said dealer had a valid registration.

4. In this regard, the learned counsel for the petitioner submits that in the impugned order, the dates of invoices, all pertaining to the year 2011 have been given and on perusal of the Departmental Website, it is seen that the registration of M/s.Allied Indo Marketters was canceled only on 11.1.2013. It is the further case of the petitioner that on the date when they effected purchases, the said dealer had a valid registration.

5. This being the factual contention, it has to be raised by the petitioner before the respondent. However, since the petitioner has not given any objections, the respondent cannot be faulted for passing the impugned order.

6. But, considering the fact that the petitioner has certain documents to show that on the effective date i.e. the date on which, they effected purchases, the said dealer was a registered dealer, this Court is inclined to

grant one more opportunity to the petitioner to before the Assessing Officer and produce necessary proof in this regard, by putting the petitioner on certain terms.

7. In the light of the above, the writ petition is disposed of with a direction to the petitioner to pay 15% of the disputed tax to the respondent within a period of three weeks from the date of receipt of a copy of this order. On such payment, the petitioner is entitled to treat the impugned assessment order as a show cause notice and submit their objections within a period of two weeks therefrom. On receipt of the objections, an opportunity of personal hearing shall be granted to the petitioner and the assessment shall be redone in accordance with law. In case of any default in payment, this order will not enure to the benefit of the petitioner and the writ petition will stand automatically dismissed without any further reference to this Court. No costs. Consequently, the above WMPs are closed.

20.10.2016

Internet : Yes

To
The Commercial Tax Officer, Chithode Circle, Erode, Erode District.

RS

<u>T.S.SIVAGNANAM,J</u>

RS

WP.No.36711 of 2016 & WMP.
Nos.31554 and 31555 of 2016

20.10.2016