IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.37593 of 2016 and

W.M.P.Nos.32217 to 32219 of 2016

Tvl.Brandgalli ... Petitioner

Vs

1.The Commercial Tax Officer,
Selaiyur Assessment Circle,
No.3, Sri Ram Nagar Road,
Rajeswari Nagar Extension
Velacherry Main Road, Selaiyur,
Chennai, 600 073

2.The Branch Manager,
HDFC Bank Limited,
1st Floor, Kamalammal Complex,
187, Velacherry Main Road,
Selaiyur, Chennai-600 073 ... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records connected with the impugned order of the first respondent, dated 22.07.2016, issued in respect of TIN No.33850948381/2014-15 of the petitioner, pertaining to the assessment year 2014-15 and to quash the same, holding the same to be unconstitutional, without the authority of law and excessive besides being without jurisdiction and arbitrary and one passed without following the principles of natural justice and therefore is not valid in the eye of law.

For Petitioner : Mr.N.Viswanathan
For Respondents: Mr.K.Venkatesh,G.A. for R1

O R D E R

Heard Mr.N.Viswanathan, the learned counsel for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, who accepts notice on behalf of the respondents and with the consent of either side, the writ petition itself is taken up for final disposal.

2. The petitioner is an Proprietorship concern and registered as a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, for short). In this writ petition the petitioner challenges an order of assessment for the year 2014-15, in and by which, the first respondent has confirmed the proposal, in the notice dated 30.06.2016, whereunder the first respondent proposed to reverse the input tax credit to the tune of Rs.4,37,543/-, under Section 19(5)(c) of the TNVAT Act.

3. It is not in dispute that the petitioner though received the notice dated 30.06.2016, did not submit their objections. Therefore, the first respondent, after holding for a considerable period of time, has completed the assessment and confirmed the proposal in the notice, dated 30.06.2016. Therefore, it is not a case of violation of principles of natural justice, but a case where the dealer/petitioner did not avail the opportunity afforded to them. Therefore, the first respondent cannot be faulted for having passed the impugned assessment order.

4. The learned counsel for the petitioner would contend that the provisions contained in Rule 10(9)(a) of the TNVAT Rules, 2007, which stood as it was during the assessment period 2014-15, mandates for the allowing of input tax credit on interstate sale, only when the sale is made against Form-C, prescribed under the Central Sales Tax Act (Registration and Turnover) Rule 1957 having been omitted from the TNVAT Rules, vide Notification in G.O.Ms.No.18 of 2016, dated 29.01.2016 and therefore, on the date when the respondent issued the notice i.e. on 30.06.2016, for the assessment period 2014-15, the Rule was not in the Statute book and therefore, the impugned demand is unsustainable.

5. It has to be pointed out that the issue pertains to the assessment year 2014-15, during which period, the Rule 10(9)(a) of the TNVAT Rules was very much available in the Statute book. However, this issue need not be considered by this Court, since the petitioner can very well go before the assessing officer and raise all the contentions. This Court is inclined to grant such liberty because the petitioner's bank account has been attached and out of the total amount of Rs.4,37,543/-, a sum of Rs.1,64,526.24 has already been recovered. This would amount to more than 35% of the amount demanded as tax. Therefore, this Court is of the view that the bank attachment can be lifted and the petitioner should be directed to furnish a bond for the differential amount and they may be permitted to go before the assessing officer and raise all the objections, by treating the impugned proceedings as a show cause notice.

6. In the light of the above and taking into consideration that a sum of Rs.1,64,526.24 has already been recovered by the first respondent, by attaching the petitioner's bank account, no further recovery shall be effected and the bank attachment shall stand lifted subject to the condition that the petitioner furnishes a bond for the remaining tax demanded and simultaneously submits their objections to the impugned assessment order, by treating the same as a notice, within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the first respondent shall consider the same and re-do the assessment, after affording an opportunity of personal hearing to the petitioner. It is needless to state that the legal issue raised by the petitioner shall also be considered by the first respondent without in any manner being influenced by any of the observations made in this order.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk
To
1.The Commercial Tax Officer,
Selaiyur Assessment Circle,
No.3 Sri Ram Nagar Road,
Rajeswari Nagar Extension
Velacherry Main Road, Selaiyur,
Chennai, 600 073

2.The Branch Manager,
HDFC Bank Limited,
1st Floor, Kamalammal Complex,
187, Velacherry Main Road,
Selaiyur, Chennai-600 073.

+ 2 ccs to M/s. M. Viswanathan, Advocate SR.61323

+ 1 cc to Special Government Pleader Sr.61547

W.P.No.37593 of 2016

CTK(CO)
Eu 02.11.16