BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2016

CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

W.P. (MD) No.22124 of 2016
& W.M.P.(MD) No.15840 of 2016

Tvl. Raja Steel Company,
Rep. by its Partner, J.S.Wasim,
Having Office at: No.101 Hospital Road,
Rajapalayam, Virudhunagar District ... Petitioner

vs.

The Commercial Tax Officer (FAC),
Commercial Tax Department,
Rajapalayam II,
Virudhunagar District ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in TIN No.33696062891/2014-15, dated 31.08.2016 and to quash the same.

For Petitioner : Mr. T.Bashyam
For Respondent : Mr. R.Karthikeyan, AGP.,

O R D E R

Heard both sides. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. Brief facts:-

The petitioner company is carrying on business in the trading of steel. The petitioner was regularly filing its monthly return and paying the tax. For the assessment year 2014-15, the petitioner filed its return and paid the tax.

2.1. The respondent has issued a notice on 14.06.2016 stating that Annexure II Form I Returns, filed by the other-end dealers were verified and found that there was purchase suppression by the petitioner; that the petitioner has effected purchase of goods, claimed Input Tax Credit and the consignors have not disclosed the transactions made with the petitioner, in their monthly returns and did not pay the tax; hence, the respondent proposed levy of tax and penalty; due to medical reasons, the petitioner had not filed any objection; therefore, the respondent, has passed a revised assessment order, dated 31.08.2016, and levied the tax at Rs.61,166/- and penalty at Rs.53,890/-; challenging the said assessment order, this writ petition has been filed by the petitioner.

3. The learned counsel appearing for the petitioner submitted that the respondent failed to consider the fact that the petitioner has paid the tax and reported the same in Annexure I of his return. The learned counsel further submitted that the buying dealer (petitioner) should not be penalized for the omission on the part of the selling dealer. The learned counsel further submitted that the respondent ought to have considered the fact that due to medical reasons, the petitioner is not able to file the objection / reply; the present impugned order has been passed by the respondent, without affording an opportunity of personal hearing to the petitioner, therefore, the same is against the principles of natural justice.

3.1. The learned counsel for the petitioner relied upon the decision of this Court rendered in W.P.Nos.2036 to 2038 of 2013 (Sri Vinayaga Agencies v. The Assistant Commissioner (CT), dated 29.01.2013. The learned counsel appearing for the petitioner pointed out that the issue involved in this writ petition is covered by a decision of this Court, in the case of Infiniti Wholesale Limited v. The Assistant Commissioner (CT) in W.P.No.9265 of 2013, dated 06.11.2014, wherein it has been held as under:-

> "... the Input Tax Credit availed by the petitioner could not be denied and there is no need to reverse the Input Tax Credit availed by the purchaser of the goods on the ground that the selling dealer has not filed returns or not paid tax or they were unregistered dealers or their registrations were retrospectively cancelled."

4. The learned Additional Government Pleader appearing for the respondent submitted that there is no quarrel over the proposition stated in the above decision, but submitted that the Department, having waited for more than 60 days and in the absence of any documentary evidence produced by the petitioner in support of its claim, was compelled to pass the order of assessment.

5. This Court has carefully considered the submissions made by the learned counsel for both sides and perused the materials available on record.

6. The facts are not in dispute. This Court is of the firm view that Infiniti Wholesale Limited's case, relied upon by the

learned counsel for the petitioner, is squarely applicable to the facts of the case on hand. But, at the same time, the opportunity of filing objections to the petitioner, by way of notice, dated 14.06.2016 has not been availed of, by the petitioner stating medical reasons. Further, the respondent has also not passed the assessment order within a period of 15 days, as mentioned in the notice and has waited for more than 60 days to pass assessment order (confirming the proposal). Therefore, it is a case where the petitioner must be put on certain terms.

7. Hence, the impugned order, dated 31.08.2016, deserves to be set-aside, in the light of the reported decisions, cited supra. However, the matter is remitted back to the respondent with a direction to provide personal hearing to the petitioner and then to decide the matter afresh, on merits and in accordance with law. The opportunity to avail personal hearing is subject to the payment of 10% of the demand made, which shall be paid, within a period of four weeks from the date of receipt of a copy of this order. This payment is subject to the result of the final orders being passed by the respondent.

8. With the above terms, this petition stands disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar.

To
The Commercial Tax Officer (FAC),
Commercial Tax Department,
Rajapalayam II, Virudhunagar District

W.P.(MD)No.22124 of 2016
& W.M.P.(MD) No.15840 of 2016
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