BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2016

CORAM:

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.(MD)No.9797 of 2016
and
W.M.P.(MD)No.7752 of 2016

P.Robinson
... Petitioner

Vs.

The Commercial Tax Officer,
Thuckalay Assessment Circle,
Thuckalay.
... Respondent

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in TIN 33296161275/ 2008-09 dated 11.03.2016 and to quash the same as illegal, arbitrary and against the judgment of this Court reported in 82 VST 457 in the case of M/s. Infiniti Agencies and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and thereafter to pass order afresh.

For Petitioner : Mr.N.Sudalai Muthu for Mr.S.Karunakar
For Respondents : Mr.R.Karthikeyan, AGP

O R D E R

The petitioner namely, P.Rabinson, who is engaged in the business of executing works contract for various departments of State of Tamil Nadu, was assessed separately after verification of the returns filed by him under Section 22(2) of the TNVAT Act, which resulted in excess of payment of tax and the same was refunded to the petitioner. Subsequently, the respondent had issued a notice on 07.10.2015 mentioning the following discrepancies, namely -

> "a. The petitioner had filed a returns at one stroke on 20.03.2009 belatedly
>
> b. Purchases effected by the petitioner were verified with the Annexure - II of the selling dealer and hence, the ITC claimed by the petitioner was proposed to be reversed.

c.The sales turnover disclosed by the petitioner was too meager. The Gross profit, Freight and loading and unloading and unloading charges incurred should be added with the purchase turnover to arrive a deemed sale value of the transfer of property in goods. Hence, it was also proposed to add 10% addition with the deemed sale value.

d.Labour charges and other charges not involving any transfer of property of goods are not ascertainable from the books of accounts and the returns filed before the respondent."

For all the above said reasons, the respondent has proposed to pass a revised assessment order by adding gross profit, fright, loading and unloading charges at 10%.

2.Immediately, on receipt of the said notice, dated 07.10.2015, the petitioner filed his reply on 30.11.2015, making it clear that the monthly returns had been regularly paying and it was also verified by the respondent and order also had been passed, which resulted in excess payment of tax that was also refunded by the respondent vide order dated 24.02.2011 under Section 22(2) of the TNVAT Act. It was also the reply of the petitioner that they had effected a purchase against the original invoice on payment of consideration. Hence, the purchasing dealer cannot be charged for the lapse of selling dealer to that effect.

3.With the above objections, the petitioner requested the respondent to drop the proposal. But the respondent passed the non speaking order on 11.03.2006, confirming the proposal, without any valid reason.

4.In this background, the crux of the issue presented by the petitioner shows that on scrutiny of the Annexure, which revealed that they had effected purchase of goods from M/s.Kumaran Agencies, which was not reported by them and hence, the same was reversed.

5.When the petitioner has filed his returns on 20.03.2009 at a single stock, there is no bar under the provisions of the TNVAT Act to claim input tax credit. As per Section 19(11) of TNVAT Act, input tax credit can be claimed before the end of the financial year or 90 days from the date of purchase. Inasmuch as, the proviso clearly shows that the petitioner can claim ITC before the end of the financial year. Since these things have been completely omitted, the impugned order is liable to be set aside.

6.Adding further, it is also contended that the petitioner has sought for personal hearing. The books of accounts, which could not be filed, was not the fault on the part of the petitioner. It is only on the expectation that the respondent would be informing the petitioner for production of the books of accounts. More over, during the personal hearing before confirmation of proposal, the petitioner could have made available all the best documents, therefore, I find no impediment to give one more opportunity, directing to the Assessing Officer to consider the entire case of the petitioner with the aid of books of accounts, so that the petitioner would be able to clarify any defect or error in the impugned order, if any.

7.Mr.N.S.Karthikeyan, learned Additional Government Pleader appearing for the respondent sought for 4 weeks time to reconsider the case of the petitioner.

8.In view of the above, the impugned order is set aside and the matter is remanded back to the respondent and the petitioner is directed to produce all the records, including the books of accounts, within a period of one week from the date of receipt of a copy of this order. Thereafter, it is for the respondent to reconsider the case of the petitioner on merits in the light of the order passed in W.P.No.21004 of 2015 dated 14.07.2015.

No costs. Consequently, connected W.M.P.is closed.

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Thuckalay Assessment Circle,
Thuckalay.

+1cc to special Government Pleader SR.No.29797

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