IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2201 of 2017
and
W.M.P.No.2177 of 2017

M/s.Sakthi Steel Corporation,
Rep. By its Proprietor T.Saravanan,
No.44/783/4, T.H.Raod, Tollgate,
Tondiarpet, Chennai - 600 081. ... Petitioner

vs.

The Assistant Commissioner (CT),
Tondiarpet Assessment Circle,
No.19 & 20, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records on the file of the respondent in TIN.33541201770/2013-2014 dated 19.12.2016 and quash the same as illegal, contrary to the provisions of the Act and law laid down by this Court.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mr.S.Kanmani Annamalai,
Addl. Govt Pleader (T)

O R D E R

1. Issue notice. Mr.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondent.

2. With the consent of counsel for the parties, the writ petition is taken up for hearing and final disposal.

3. By virtue of the instant writ petition, challenge is laid to the order dated 19.12.2016, passed by the respondent.

3.1. To be noted, the impugned order pertains to assessment year 2013-2014.

4. A perusal of the impugned order shows that the respondent has reversed the Input Tax Credit (in short "ITC") availed of by the petitioner in respect of purchases made from three dealers

these being: Jayaram Dheva People Solutions, Sri Ganesh Enterprises and V Shape Enterprises, Kanchipuram. Insofar as the first two dealers are concerned ITC to the extent of Rs.2,21,795/- is reversed as the registration certificate of these dealers were cancelled. As regards the third dealer, i.e.,V Shape Enterprises, Kanchipuram is concerned, the ITC was reversed on the ground that while annual return for the year 2013-2014 was filed by the said dealer, tax had not been paid as per the respondent. Accordingly, the respondent has reversed ITC qua purchases made from the said dealer to the extent of Rs.2,62,766/-. Consequently, while reversing the total amount of ITC to the extent of Rs.4,84,561/-, the respondent has also imposed penalty in the sum of Rs.2,42,281/-.

5. It is the contention of Mr.T.Pramodkumar Chopda, learned counsel for the petitioner that the impugned order is flawed for the reason that insofar as the ITC was reversed qua dealers, from whom purchases were made whose registration certificate was cancelled, the same was not a valid ground for the simple reason that on the date of purchase, the two dealers i.e., Jayram Dheva People Solutions and Sri Ganesh Enterprises had valid registration certificate. It is further stated by the learned counsel that the registration certificate of Jayram Dheva People Solutions was cancelled only on 21.12.2010 while that of Sri Ganesh Enterprises was cancelled on 31.01.2013.

6. The fact that the cancellation was given retrospective effect, according to the learned counsel would have no effect in view of the judgment of this Court dated 01.09.2016, passed in a batch of writ appeals, the lead writ appeal being W.A.No.946 of 2016, titled: The Assistant Commissioner Vs. M/s.Bhairav Trading Company.

6.1. As regards the other ground raised qua for reversal of ITC pertaining to purchases made from V Shape Enterprises, Kanchipuram, learned counsel relies upon another judgment of the Division Bench dated 09.09.2016, passed in W.A.No.775 of 2016, titled: The Assistant Commissioner Vs. Infinity Wholesale Ltd.

7. I put to Mr.Kanmani Annamalai, learned counsel for the respondent as to whether in the light of judgments of the Division Bench of this Court, the impugned order could be sustained. Mr.Kanmani Annamalai, in fairness, concedes that in view of the ratio of the aforementioned two judgments cited by the counsel for the petitioner, the impugned order would have to be set aide.

8. I have heard the learned counsel for the parties and perused the records.

9. Having regard to what is indicated in the order and the ratio of the judgment referred to above, in my view, the impugned order cannot be sustained. However, liberty is given to the respondent to redo the assessment, if necessary, albeit, in accordance with law. If the respondent were to decide to redo the assessment, he will take into account not only the judgments cited above, but would also deal with the stand taken by the petitioner, inter alia, with regard to the fact that the date on which, the transaction was made between the selling dealer and the petitioner, the registration certificate was valid. Insofar as purchases made from V Shape Enterprises, Kanchipuram is concerned, Mr.Annamalai, says he cannot but argue that, if taxes were not paid by the said dealer, proceedings could only be taken out against V Shape Enterprises, Kanchipuram.

10. The writ petition is, thus, disposed of in the aforementioned terms. Resultantly, the connected application is closed. There shall, however, be no order as to costs.

s/d-
Assistant Registrar(CCC)

//True Copy//

Sub-Assistant Registrar

To

The Assistant Commissioner (CT),
Tondiarpet Assessment Circle,
No.19 & 20, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081.

+1 CC to Special Government Pleader(Taxes), High Court, Madras, sr 5982
+1 CC to M/s. T. Pramodkumar Chopda, Advocate sr 5825

W.P.No.2201 of 2017

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