IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22196 of 2017
and
W.M.P.No.23224 of 2017

Tvl.Columbia Lube Enterprises,
Rep. By its Proprietor K.Ravi Babu,
21/46, First Floor, Navalar Nagar,
Chennai - 40. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Chennai - 17. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of the respondent in TIN/33851353550/2013-14, dated 30.05.2017, and quash the same as arbitrary, illegal.

For Petitioner : Mr.T.V.Ganesh

For Respondent : Mr.K.Venkatesh, GA

ORDER

Heard Mr.T.V.Ganesh, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent, and with the consent of either side, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by the impugned order dated 30.05.2017 which is an order of assessment under the provisions of the TNVAT Act, 2006, for the year 2013-14.

3. The respondent issued a notice dated 22.05.2015 stating that on cross verification of annexure-I of the petitioner with annexure-II of the seller viz. M/s.Serendib Traders for the months of October, 2013 and November, 2013, it was observed that the petitioner has shown purchases of goods worth Rs.1,16,77,000/- and claimed Input Tax Credit (ITC) at 5%

amounting to Rs.5,83,850/-; that on verification of annexure-II of M/s.Serendib Traders, it revealed that they had not made any sales to the petitioner during the above period. Therefore, it was alleged that the petitioner has made incorrect claim of ITC. The petitioner submitted a reply stating that M/s.Serendib Traders, their seller, are an active dealer and they have effected purchase from them. The petitioner enclosed copies of the purchase bills and stated that they have confirmed with the selling dealer that they have already filed monthly returns in respect of the purchase effected by the petitioner. The reply given by the petitioner was received by the respondent on 29.05.2017.

4. The respondent in the impugned order, while accepting that the petitioner has produced the purchase bills, would state that the petitioner has not furnished payment details to establish that the purchases were made from the seller only. In fact, the respondent in the show cause notice dated 22.05.2015 did not call for the details. Therefore, if the respondent had afforded an opportunity of personal hearing to the petitioner and directed them to produce the necessary details, the present litigation itself could have been avoided. So far as the allegation that the selling dealer has not reflected the same in his annexure-II returns cannot be the sole reason to penalize the petitioner.

5. Learned counsel for the petitioner would submit that if the respondent had called for payment details, they would have furnished the same and submitted that if an opportunity is granted, they will be able to produce the payment details which are through banking challan.

6. In the light of the above, the writ petition is disposed of by directing the petitioner to treat this impugned proceeding as show cause notice and submit their additional objections and furnish the payment details within a period of ten days from the date of receipt of a copy of this order. On receiving the additional reply along with necessary details, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No Costs. WMP.No.23224 of 2017 is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Chennai - 17.

+1cc to Mr.P.R.Kumar, Advocate sr.59648

+1cc to Special Government Pleader (Taxes) sr.60141

W.P.No.22196 of 2017

sk(co)
ss(24/10/2017)