IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.2325 of 2017
And
W.M.P.No.2308 of 2017

Tvl.Sun Powers
Represented by its Proprietrix,
S.Radhamani ... Petitioner

Vs.

The Commercial Tax Officer
Park Road Circle,
Erode. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN.33412862045/2012-13 dated 12.04.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

1.Issue Notice. Mr.K.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondent. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.By virtue of this writ petition, challenge is laid to the order dated 12.04.2016, whereby, Input Tax Credit to the extent of Rs.78,287/- has been reversed and penalty of an equal amount has been levied on the petitioner.

3.A perusal of the impugned order, however, would show that it is pivoted on one singular fact, which is, that the end dealers i.e., the sellers, have not reported the sales transactions entered into between them and the petitioner.

4.I must indicate that though the learned counsel for the petitioner conceded that a pre-assessment notice was issued to the petitioner, qua, which objections were not filed - it is however, the contention of the learned counsel that no material was supplied with the pre-assessment notice and that in any event, the ITC could not have been reversed, solely, on the ground that the end dealers had not reported the transactions effected with the petitioner.

4.1.In support of this submission, the learned counsel for the petitioner relies upon the following judgments rendered by this Court:

(i) ***Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai, (2012) 50 VST 179; (ii) Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another (2013) 60 VST 283 (Mad); and (iii) Infinity Wholesale Ltd., Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai – 107 (2015) 82 VST 457.***

5.Mr.Venkatesh, who appears for the respondent says, he cannot, but submit, that in view of the judgments rendered by this Court, the impugned order would have to be set aside and, perhaps, the assessment order, would have to be redone.

6.Having heard the learned counsels appearing for the parties and perused the record, I am inclined to agree with the learned counsel for the petitioner that, notwithstanding, the fact that objections were not filed to the pre-assessment notice, the respondent i.e., Assessing Officer could not have come to a conclusion that the transactions were bogus on the ground that they were not reported by the end dealers and therefore, he had no alternative, but, to confirm the proposal set out in the pre-assessment notice.

7.The respondent i.e., Assessing Officer, in my view, could have only come to a conclusion that the subject transactions were bogus, based on substantive material, and not that because objections were not filed by the petitioner, the assertions made in the pre-assessment notice would have to be deemed to be correct. Furthermore, if, material was available with respondent to come to the conclusion that the transaction were bogus, adequate opportunity had to be given to the petitioner to meet the charge. The impugned order shows that there is no discussion on this aspect of the matter. The respondent i.e., Assessing Officer has merely proceeded to confirm the proposal on the ground that no objections were filed by the petitioner i.e., assessee. This approach cannot be countenanced in law.

8.In these circumstances, the impugned order is set aside. Liberty is, however, given to the respondent to redo the assessment, after putting to the petitioner, i.e., assessee, the material in his possession and affording due opportunity to deal with the material. Needless to say, if a fresh assessment is carried out, the respondent i.e., assessing officer will pass a speaking order, taking into account, the aforementioned observations.

9.The writ petition is, accordingly, disposed of, in the aforementioned terms. Consequently, the connected pending application is also closed. However, there shall be no order as to costs.

01.02.2017

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Index: Yes/ No
Internet: Yes/ No

To

The Commercial Tax Officer
Park Road Circle,
Erode.

RAJIV SHAKDHER,J.
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