IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.01.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.391 of 2017
and WMP No.424 of 2017

M/s.Vellore Ceramics,
rep.by its Proptx. Smt.Sasi Surana,
521/A, Penial Complex,
RTO Road, Vellore-9. .. Petitioner

Vs.

The Commercial Tax Officer,
Vellore (Rural) Circle,
Commercial Taxes Buildings,
Vellore. .. Respondent

* * *

Prayer : Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, or any other appropriate writ by calling for the records of the respondent in h is proceedings in TIN 33764321363/2013-14, dated 14.11.16 and quash the same as illegal.

* * *

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh,
Govt. Advocate

O R D E R

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

2. By virtue of the impugned order, the respondent has reversed the Input Tax Credit (ITC) and gone on to impose penalty at the rate of 100% for two principal reasons. The first, due to the alleged non-production of proof of payment. Second, on account of mismatch in the information available on

the Department's website, as against that, which is reflected in the petitioner's monthly returns.

3. Counsel for the petitioner says that the notice dated 09.02.2015 proposing reversal of ITC was not received by the petitioner. This apart, counsel for the petitioner says that no information / material, which was available with the respondent was furnished to the petitioner, which could have led him to come to the conclusion that there was a mismatch in the information available on the Department's website, as against that, which stood reflected in the monthly returns filed by the petitioner.

3.1. By way of example, learned counsel for the petitioner has referred to the table, set out in the impugned order.

3.2. Learned counsel draws my attention to the fact that insofar as the first transaction is concerned, neither the invoice number is indicated, nor is the invoice date properly set out.

3.3. Insofar as second transaction is concerned, it is stated that the name of the seller is not reflected therein.

3.4. Notwithstanding the aforesaid, learned counsel for the petitioner says that ITC reversal cannot be made merely on account of mismatch in information, which is, available on the Department's website, and that, which is, reflected in the monthly returns filed by the petitioner. In this behalf, reliance is placed upon the following judgements :

(i) Judgment of the Division Bench, dated 09.09.2016, passed in W.A.No.775 of 2016, titled : The Assistant Commissioner (CT) Vs. M/s.Infiniti Wholesale Limited.

(ii) Judgment of the Division Bench, dated 10.11.2016, passed in W.A.Nos.1367 and 1368 of 2016, titled : The Assistant Commissioner (CT), Vs. M/s.Althaf Shoes (P) Ltd.

4. Clearly, the respondent has not considered the effect of the judgements of this Court, which have been cited, by the counsel for the petitioner. Furthermore, there is a doubt with regard to the factum of the petitioner having received a copy of the notice dated 09.02.2015.

4.1. Having regard to the aforesaid, the impugned order is set aside with a direction to the respondent to redo the assessment after serving a fresh copy of the notice dated 09.02.2015, and thereafter, giving an opportunity to the petitioner to file its objections to the same.

4.2. The respondent will also supply all information/material, which is available with him and that, which forms basis of the notice dated 09.02.2015.

4.3. The respondent will pass a fresh order, after affording personal hearing in the matter to the petitioner.

4.4. Needless to say that the order passed, will be a speaking order.

5. The writ petition is closed in terms of the aforesaid direction. Resultantly, pending application shall stand closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer,
Vellore (Rural) Circle,
Commercial Taxes Buildings,
Vellore.

+1 cc to the Special Government Pleader (Taxes) sr 1724
+1 cc to M/s.S.Ramanathan Advocate sr 1780

W.P.No.391 of 2017
& WMP No.424 of 2017

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