IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.15050 of 2017
and
W.M.P.No.16290 of 2017

M/s.K.P.K.Enterprises,
Represented by T.Bharathi Mohan,
Proprietor,
24, Welfare school street,
Nagalkeni, Chrompet,
Chennai - 600 044. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Pammal Assessment circle,
Chennai - 44 .. Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records on the files of the respondent in TIN:33090887010/2014-15 dated 02.05.2017 received on 05.05.2017, and quash the same as being invalid and illegal and violative of principles of natural justice

For Petitioner : Mr.C.Venkatraman

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

Mr.S.Kanmani Annamalai, the learned Additional Government Pleader (Tax), takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 02.05.2017 passed in respect of the assessment year 2014-2015. The issue involved in this case is the reversal of ITC under Section 19(2)(v) of the Tamil Nadu Value Added Tax, Act.

3. Admittedly the petitioner is a dealer and not a manufacturer and therefore, the Assessing Officer is entitled to consider and decide as to whether such reversal made by the petitioner is valid or not. The grievance of the petitioner before this Court is that the reply filed to the notice of proposal was not considered properly and on the other hand the same was rejected as though it pertains to the assessment year 2015-2016.

4. The learned counsel for the petitioner after inviting this Court's attention to the said reply dated 16.02.2017, pointed out that in the said reply, the petitioner has referred only to the ITC reversal for the year 2014-2015 only by giving certain details in support of their contention. Therefore, he submitted that the Assessing Officer has failed to apply his mind to the said reply and consequently passed the assessment order erroneously by rejecting the claim of the petitioner.

5. The learned Additional Government pleader (Tax) appearing for the respondent, on perusal of the reply filed by the petitioner, fairly submitted that the reply given by the petitioner is dealing only with the reversal of the ITC for the assessment year 2014-2015 and therefore the Assessing Officer has to re-consider the whole issue.

6. Upon perusing the reply filed by the petitioner and the order of assessment impugned in this writ petition and also hearing the learned counsels appearing on either side, this Court is of the clear view that the Assessing Officer has not considered the reply dated 16.02.2017 properly, especially when the said reply has dealt with the ITC reversal in respect of the assessment year 2014-15 only. Therefore, the Assessing Officer has to re-consider the whole issue once again and pass fresh order of assessment, after giving due opportunity of hearing to the petitioner. Accordingly, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the Assessing officer is directed to re-consider the issue as stated supra, within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

mk /sm

To

The Assistant Commissioner (CT),
Pammal Assessment circle,
Chennai - 44

+1cc to Mr.C.Venkatraman, Advocate, S.R.No.42236
+1cc to the Special Government Pleader, S.R.No.42271

W.P.No.15050 of 2017

MSM(CO)
CS/28/06/17