IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25768 of 2017

R.K.Industries - IV,
rep. by its Partner,
Mr.Kiran Agarwal,
Nos.37 & 37A, Old Trunk Road,
Pallavaram,
Chennai 600 043. ... Petitioner

vs.

The Commercial Tax Officer,
Chromepet Assessment Circle,
No.117, Station Road,
Radha Nagar,
Chennai 600 044. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings dated 13.05.2016 in TIN No.33910945438/2010-11-XII for the month of March 2011, quash the same and for a direction, directing the respondent to consider the objection filed by the petitioner.

For Petitioner : Mr.Senniappan
for Mr.R.Saravanakumar

For Respondent : Mr.K.Venkatesh,
Government Advocate (Taxes)

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the proceedings dated 13.05.2016 in TIN No.33910945438/2010-11-XII for the month of March 2011 and for a direction to the respondent to consider his objections.

2. According to the petitioner, he is a dealer engaged in manufacture and export of ready-made garments and is an assessee on the file of the respondent. For the assessment period of

March 2011, the petitioner filed Form "W" and availed Input Tax credit to the tune of Rs.5,82,657/- on raw materials and capital goods. However, the respondent issued pre-assessment notice dated 15.10.2015, proposing to disallow the Input Tax Credit availed by the petitioner on the premise that spare parts are ineligible for Input Tax Credit and that the selling dealer did not file returns.

3. The petitioner submitted a reply on 07.04.2016, stating that the purchase of components/spare parts and accessories relate to the capital goods/machineries. He further pointed out that the copies of Bills/Invoices with TIN numbers of the sellers were furnished, while filing Form 'W' and that the petitioner cannot be held responsible for the same, as it is always open to the respondent to verify the details with the selling dealer. However, the respondent/Assessing Officer passed the Assessment Order, rejecting and reversing the claim of Input Tax Credit of an extent of Rs.16,877/-. It is the further case of the petitioner that as the Bills/Invoices issued by the seller were not readily available, he could not get a copy of the same from the respective sellers and it took more than 6 to 9 months to identify the sellers and collect the respective Bills/Invoices from them. Hence, challenging the impugned order, the petitioner is before this Court.

4. Learned counsel for the petitioner contended that the provisional assessment made with regard to the respective month for the year 2010-11 after the expiry of the assessment year is bad and prayed for allowing the Writ Petition.

5. In reply, learned Government Advocate appearing for the respondent submitted that the impugned proceedings is only a provisional assessment and final assessment has got to be made for the Accounting year. He submitted that the respondent may be directed to make final assessment for the Accounting year in accordance with law and communicate the same to the petitioner.

6. Taking note of the submissions of the learned counsel on either side and considering the facts and circumstances of the case, the impugned order dated 13.05.2016 passed by the respondent is set aside and the respondent is directed to make a final assessment in accordance with law, after hearing the petitioner in person and after verifying the records produced by him.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.No.27192 of 2017 is closed.

Assistant Registrar
Dt.

//True Copy//

Sub Assistant Registrar

aeb

To:

The Commercial Tax Officer,
Chromepet Assessment Circle,
No.117, Station Road,
Radha Nagar,
Chennai 600 044.

+1 cc to M/s.R.Saravanakumar,advocate,sr.71560

+1 cc to Spl.Govt.Pleader,sr.71171.

Ad(co)
krd 22/11