IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.16102 of 2017
and W.M.P.Nos.17387 and 17388 of 2017

M/s Universal Petroleum
rep. By its Proprietor
A.Karthik
No.1, Plot No.49, 5th Street,
Kumaran Colony,
Vadapalani, Chennai 26.
[Petitioner]

Vs

1 The Commercial Tax Officer,
K.K.Nagar Assessment Circle,
16/55, Dr.Govindan Road
West Mambalam, Chennai 33.

2 The Branch Manager,
ICICI Bank, K.K.Nagar Branch,
Munusamy Salai, K.K.Nagar,
Chennai 78

[Respondents]

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari to call for the records of the respondent in TIN:33251425272/2013-14 and quash the order dated 21.11.2016 passed therein.

For Petitioner : Mrs.Hema Muralikrishnan
For Respondents: Mr.S.Kanmani Annamalai, SGP (R1)

O R D E R

Mr.S.Kanmani Annamalai, learned Special Government Pleader(Taxes), takes notice for the 1st respondent.

2. By consent, the main writ petition itself is taken up for disposal at the admission stage itself.

3. The petitioner has filed the above Writ Petition to issue a writ of Certiorari to call for the records of the 1st respondent in TIN:33251425272/2013-14 and to quash the order dated 21.11.2016 passed therein.

4. It is the case of the petitioner that the 1st respondent has reversed the Input Tax Credit on the sole ground that the seller M/s Golden Oil Corporation had not filed its returns. According to the petitioner, the said M/s Golden Oil Corporation is a registered dealer and that the petitioner cannot be called upon to pay the taxes just because the other registered dealer has not paid the tax and the department has failed to collect the same from the other registered dealer, as held by this Court in the case of Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai. Further, penalty has been levied in the impugned order without any proposal for the same.

5. The learned counsel appearing for the petitioner submitted that the petitioner was not given an opportunity to file their objections and therefore, the petitioner may be given an opportunity to file their objections before the respondent along with all the necessary documents.

6. Mr.S.Kanmani Annamalai, learned Special Government Pleader (Taxes) appearing for the 1st respondent submitted that the petitioner may be given an opportunity to file their objections along with all the relevant documents before the 1st respondent and in such an event, the 1st respondent may be directed to decide the matter afresh.

7. Having regard to the submissions made by the learned counsel on either side, since the petitioner was not given an opportunity to file their objections and the documents, the impugned order dated 21.11.2016 is set aside and the matter is remanded back to the 1st respondent for fresh consideration. The petitioner is directed to file their objections along with all the relevant documents before the 1st respondent within ten days from the date of receipt of a copy of this order and on filing the objections and documents before the 1st respondent, the 1st respondent is directed to decide the matter afresh, after giving an opportunity of hearing to the petitioner.

With the above observation, the writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1 The Commercial Tax Officer,
K.K.Nagar Assessment Circle,
16/55, Dr.Govindan Road
West Mambalam, Chennai 33.

2 The Branch Manager,
ICICI Bank, K.K.Nagar Branch,
Munusamy Salai, K.K.Nagar,
Chennai 78.

+ 1 cc to Special Government Pleader Sr.44647
+ 1 cc to L. Murali Krishnan, Advocate Sr.44900

W.P.No.16102 of 2017

NR(CO)
EU 27/06/2017