In the High Court of Judicature at Madras

Dated : 08.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.28503 of 2017 & WMP.Nos.30617 & 30618 of 2017

M/s.Ojus Power Technologies Pvt.
Ltd., rep.by its Managing Director
Ram Sampathkumar ...Petitioner

Vs

The Assistant Commissioner (CT),
Hosur (South) Circle, Hosur,
Krishnagiri District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN No.33763365234/ 2012-13 dated 31.8.2017 and quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal. Added to that, because of the glaring error committed by the Assessing Officer, this Court is inclined to dispose of the main writ petition itself at the admission stage.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The respondent issued a notice dated 22.1.2014 proposing to reverse the input tax credit availed by the petitioner on the ground that they have effected purchases from registration canceled dealers during the assessment year 2012-13. The petitioner submitted their objections on 21.2.2014 stating that due to oversight, they mentioned old tax payer identification number of the selling dealer and enclosed copy of Annexure II as proof of output payment and that they had also updated their records by mentioning the correct tax payer

identification number as 33350600911 of M/s.Power House.

3. Subsequently, another notice dated 28.4.2017 was issued on the same lines. Again, the petitioner submitted their objections on 09.6.2017. The first reply dated 21.2.2014 was received in the office of the Assistant Commercial Tax Officer, Hosur (South) and signed by the Superintendent on 03.3.2014. The second reply dated 09.6.2017 was received by the office of the respondent by affixing his seal and signature dated 13.6.2017. However, in the impugned assessment order, the respondent stated that the petitioner had not filed any objections. Thus, it is clear that the impugned order has not only been passed in violation of the principles of natural justice, but also without due application of mind. This is sufficient to set aside the impugned order.

4. On a perusal of the notices as well as impugned order, it is seen that the respondent has been guided solely by the report submitted by the officials of the Enforcement Wing. This Court has been repeatedly holding that the Assessing Officer, being an independent Statutory Authority, should not be solely guided by the report of the officials of the Enforcement Wing, but shall decide the matter on the basis of the objections filed by the assessee. In this regard, the respondent shall bear in mind the decision of the Hon'ble Division Bench of this Court in the case of Madras Granites (P) Ltd. Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642]. For the above reasons, the impugned order is liable to be set aside.

5. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration and the respondent shall fix a date for personal hearing, consider the objections of the petitioner dated 21.2.2014 and 09.6.2017 and redo the assessment on merits and in accordance with law. No costs. Consequently, the connected WMPs are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT), Hosur (South) Circle,
Hosur, Krishnagiri District.

+1 CC to Ms.R. Hemalatha, Advocate sr 79455.
+1 cC to The Spl. Govt. Pleader sr 79133.

WP.No.28503 of 2017 &
WMP.Nos.30617 & 30618
of 2017

BR(CO)
SP(28/11/2017)