IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.1903 of 2017

And

W.M.P.No.1923 of 2017

M/s.South India Jewellers
Rep. by its Proprietor ... Petitioner
Sowcarpet, Chennai 1

Vs.

The Assistant Commissioner (CT),
Peddunaickenpet Assessment Circle,
Wavoo Mansion, Chennai. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in the order in TIN:33940280535/ 2012-13, DT:09.12.2016 and quash the same as contrary to the provisions of TNVAT Act and against the principle of natural justice and further direct the respondent to consider the reply dt.7/11/16 and provide an opportunity of personal hearing.

For Petitioner : Ms.C.Rekha Kumari
For Respondents : Mr.Kanmani Annamalai
Additional Government Pleader (Taxes)

O R D E R

1.Issue Notice. Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes), accepts notice on behalf of the respondent. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.This writ petition concerns the assessment year 2012-13. The writ petition by itself, is directed against the order dated 09.12.2016, whereby, the petitioner has been mulcted with tax in the sum of Rs.16,59,957/- and penalty to the tune of Rs.4,06,792/-. The record shows that the petitioner was issued, a proposal for reversal of Input Tax Credit on the ground that bullion purchased locally which suffered tax at the rate of 1% was sent out to other States for manufacture and/ or conversion into gold jewellery.

3.It appears that the petitioner after receiving the proposal for reversal of ITC, sought extension of time to file objections. This request was made vide communication dated 17.10.2016. That the said communication was lodged with the respondent is sought to be demonstrated by referring to the extract from the Letter Delivery Book which is appended at page 5 of the typed set of documents.

4.It appears that the petitioner, thereafter, on 07.11.2016, duly filed his objections with the respondent. This fact is again sought to be established by relying upon the extract from the Letter Delivery Book; a photocopy of which, is appended at page 17 of the typed set of documents. The said extract shows that objections were received in the respondent's office on 08.11.2016.

5.It appears that the respondent, unaware of the fact that objections have been received, proceeded to pass the impugned order on 09.12.2016. The respondent, therefore, recorded in the impugned order that, despite, notice being issued and objections being invited, the same had not been filed by the petitioner.

5.1.Apparently, this is contrary to the record produced before me by the petitioner. Furthermore, the record shows that the petitioner, even after the impugned order was passed, made a representation dated 02.01.2017 to the respondent bringing to his notice that objections were infact filed. This representation was lodged with the office of the respondent on 03.01.2017. It appears that the respondent has not passed any order on the representation.

6.I have put to Mr.Annamalai that, clearly, if the record placed before this Court is to be accepted, an error has crept in the impugned order. Mr.Annamalai, accepts this position.

7.In these circumstances, the impugned order is set aside. The respondent will however, have the liberty to pass a fresh order, after affording due opportunity to the petitioner. For this purpose, a written notice will be sent to the petitioner indicating therein, the date, venue and time of the hearing. The petitioner will be at liberty to produce all the original documents, if not already filed in support of his objections. Needless to say, the respondent will pass a speaking order, after considering the objections of the petitioner.

8.The writ petition is disposed of in the aforementioned terms. Consequently, the connected pending application is also closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Peddunaickenpet Assessment Circle,
Wavoo Mansion, Chennai.

+1cc to Mr.C. Rekha Kumari, Advocate, S.R.No.5891
+1cc to the Spl.Government Pleader, S.R.No.5260

gmi(CO)
md(17/02/2017)

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