IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.25030 of 2013
and
M.P.No.1 of 2013

M/s.C&S. Tools Private Limited
rep by its Director Rameshwarlal Choudhary
No.63/33, Katchaleeswarar Agragaram
Chennai - 600001. ...Petitioner

Vs.

The Assistant Commissioner (CT) (FAC)
Harbour IV Assessment Circle
No.191, NSC Bose Road
Chennai - 600 001. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the records on the file of the respondent in TIN :33071282684/10-11 dated 26.07.2013 and quash the same as illegal, contrary to the provisions of the Act and principles laid down by this Hon'ble Court and against the principles of natural justice and fair play.

For Petitioner : Mr.T.Pramodkumar Chopda
For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Heard Mr.T.Pramodkumar Chopda, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondent.

2.The petitioner is aggrieved by an order of assessment dated 26.07.2013 passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act") for the assessment year 2010-2011.

3.It may not be necessary for this Court to elaborate upon the various factual issues raised by the petitioner and suffice to note that the request made by the petitioner to give them an opportunity to produce details and documents was not furnished by the Assessing Officer.

4.However, without prejudice to their preliminary objection it is submitted that they having produced all sufficient documents to establish the genuineness of the transactions that their transactions cannot be doubted merely because the other end dealer has not filed returns or not paid taxes or for that matter the registration certificate were cancelled.

5.However, the petitioners stated that if the respondent has to rely upon any third party statements or documents, they may be allowed to cross-examine the third party. When a similar issue was considered by the Hon'ble Division Bench in the case of M/s.Jeetendra Agencies Vs. The Commercial Tax Officer, Coonoor in W.P.No.32711 of 2002 dated 28.08.2002, the Division Bench directed the Assessing Officer to allow cross-examination of the selling dealer. A similar view was taken in the case of Althaf Shoes (P) Ltd Vs. Assistant Commissioner (CT), Chennai reported in [2012] 50 VST 179 (Mad).

6.Therefore, I am of the considered view that there has been violation of principles of natural justice in the instant case. Further more in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Chennai and another reported in [2013] 60 VST 283 (Mad) it was held that Section 19(1) states that input-tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid tax to the selling dealer. If that be the case, the petitioner's case squarely falls under the proviso to section 19(1) of the Act. It was another matter that the selling dealer had not paid the collected tax that the liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made.

7.In the light of the above, the writ petition is allowed, the impugned order is set aside and the matter is remanded for fresh consideration to afford an opportunity of personal hearing to the petitioner and permit them to produce documents and make available the third parties including the selling dealer to enable the petitioner to cross-examine them and after taking note of the decision referred to above, the respondent is directed to redo the assessment in accordance with law.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

maya/kak

To

The Assistant Commissioner (CT) (FAC)
Harbour IV Assessment Circle
No.191, NSC Bose Road
Chennai - 600 001.

+1cc to Mr.T.Pramodkumar, Advocate Sr.No.8084
+1cc to Special Government Pleader Sr.No.9058

VD(CO)
sm:22.2.2018

W. P. No.25030 of 2013