IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.40400 of 2016
and
WMP.No.34471 of 2016

Anand IT Solutions Private Ltd
Rep. by its Director
Pankaj Kothari
No.7, Narasingapuram Street,
Chennai - 600 002 .. Petitioner

Vs.

Assistant Commissioner (CT),
Chepauk Assessment Circle,
No.1, Greams Road,
Chennai- 600 006. .. Respondents

Writ petition No.40400 of 2016 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarifiled Mandamus to call for the records of the case and to quash the impugned order passed in TIN 33230662572/ 2013-14 dated 06.04.2016 by the Respondent and further direct the respondent to re-do the assessment after providing cross examination of Mr.P.R.Babu, Proprietor of M/s. Arthi Impex, Arakonam and Mr. Anil, Proprietor of M/s. Arthi Impex, Velachery and any other person necessarily to determine the nature of the issue.

For Petitioner : Mr.N. Murali
for M/s.Lessi Saravanan

For Respondent : Mrs. Narmadha Sampath
Additional Advocate General,
assisted by
Mrs.G.Dhana Madhri,
Government Advocate (T)

O R D E R

The petitioner is aggrieved against the order of assessment passed in respect of assessment year 2013-14 dated 06.04.2016.

2. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondent.

3. The Assessing Officer issued a notice of proposal on 28.10.2014 stating that the petitioner/Assessee effected purchases from three named dealers and availed Input Tax Credit and that on verification, it was found that two dealers by name Sai Infotech and Arthi Impex have not filed monthly returns and paid tax to the Government and therefore, they are not eligible for Input Tax Credit. Further, it was indicated in the notice of proposal that another dealer by name, Sri Balaji Trading Company, got their registration cancelled on 05.08.2013, from whom, the petitioner has purchased goods and availed Input Tax Credit. Thus, the petitioner was called upon to give reply. The petitioner through the reply dated 30.03.3015 disputed the allegation. Thereafter, on 29.05.2015, another notice was sent to the petitioner to file their objections, specifically by stating that one of the dealers, namely Arthi Impex, Arokanam, had given a statement that they are not at all connected with any business transaction with the petitioner and therefore, the petitioner is having the habit of making wrong claim of Input Tax Credit. The petitioner sent a reply on 15.06.2015. They also sought for personal hearing. Accordingly, personal hearing notice was also issued to the petitioner on 29.05.2015. Then one more objection was filed by the petitioner on 29.01.2016 stating that the petitioner has not violated the law in availing the Input Tax Credit. Till these communications, there is no dispute between the parties. The present writ petition is now filed challenging the order of assessment, mainly by contending that the petitioner's request for cross examining the Proprietor of Arthi Impex through their request dated 05.02.2016 was not considered. Therefore, it is contended that the principles of natural justice is violated.

4. It is the specific case of the respondent that no such request was made by the petitioner, more particularly, by any communication in writing dated 05.02.2016 seeking for cross examining the Proprietor of Arthi Impex. The Assessing Officer, who since retired, also filed an affidavit before this Court denying that the letter dated 05.02.2016 was filed in the office of the Assistant Commissioner/ Commercial Tax, Chepauk, on 05.02.2016 seeking to cross examine the selling dealer. He further stated in the affidavit that the signature as found in the document enclosed in the typed set of papers at page No.20 is not that of himself/Assessing officer.

5. Learned Additional Advocate General appearing for the respondent produced the original file before this Court. Perusal of the file also would indicate that no such communication dated 05.02.2016 said to have been made by the petitioner seeking for cross examination is available in the file. Therefore, it is evident that a disputed question of fact exists between the parties with regard to filing of a request for cross examining the Proprietor of the selling dealer, namely Arthi Impex.

6. Learned counsel appearing for the petitioner, in support of his contention relied on the initial made at letter delivery book to show that the said letter dated 05.02.2016 was given to the Assessing Officer.

7. As already stated supra, this disputed question of fact, more particularly, in the light of the affidavit filed by the then Assessing Officer cannot be gone into by this Court by exercising its discretionary jurisdiction under Article 226 of the Constitution of India. Needless to say that all these contentions can be raised by the petitioner before the next fact finding authority namely, Appellate Authority, by way of filing regular appeal. Certainly, the said authority also being the fact finding authority can go into all these disputed questions of fact and find out as to whether the contentions raised by the petitioner is correct or not.

8. Therefore, without expressing any view on the merits of the claim made by the petitioner as against the order of assessment as well as the contention raised by the respondent in support of the assessment, this writ petition is disposed of only by granting liberty to the petitioner to file a statutory appeal before the first appellate authority within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed, the First Appellate Authority shall consider the same on its own merits and pass orders in accordance with law without reference to the period of limitation owing to the pendency of the present writ petition. Such exercise shall be done by the First Appellate Authority within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Chepauk Assessment Circle,
No.1, Greams Road,
Chennai- 600 006.

+1cc to M/s.Lessi Saravanan, Advocate SR.No.56970
+1cc to Special Government Pleader SR.No.56940

W.P.No.40400 of 2016

KJI(CO)
SMI/31.08.2018