IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.32444 of 2018
and
W.M.P.Nos.37647, 37648 & 37650 of 2018

Tvl. GLS Impex Private Limited,
Represented by its Director,
R.Karpagam,
No.3, Rabin Nagar,
Omsakthi Nagar Extention,
Nemilicherry, Chrompet,
Chennai - 600044. ...Petitioner

vs.

1. The Assistant Commissioner (ST),
Alandur Assessment Circle,
Chennai - 600016.

2. The Manager,
City Union Bank Ltd,
No.77 Station Road, Ist Floor,
Radha Nagar,
Chrompet,
Chennai - 600 044. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the first respondent in TIN No.33800963686/2011-12 dated 19.03.2018 received on 20.11.2018 and quash the same.

For Petitioner : Mr.A.P.Srinivas
for Mr.A.N.R.Jayaprathap

For Respondents: Mrs.G.Dhana Madhri
Government Advocate (Tax) for R1

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the first respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 19.03.2018 passed in respect of assessment year 2011-2012.

3. Heard both sides.

4. A notice of proposal dated 19.05.2014 was issued to the petitioner alleging that the petitioner claimed ITC on the purchases referred to in the said notice and adjusted towards the tax due when such purchases were made from an unregistered dealer (Bill Trader). Thus, it was contended in the said notice that the assessee was not eligible to any ITC adjustment. The petitioner has challenged the said notice before this Court in W.P.No.14991 of 2014. This Court by an order dated 11.06.2014 clarified that the said notice has to be treated as the show cause notice and that the petitioner has to file their objections and thereafter, the Assessing Officer has to pass appropriate orders on merits and in accordance with law. Consequently, the petitioner filed their objections on 17.06.2014, specifically denying the allegation that they made purchases from any unregistered dealer.

5. On the other hand, it is contended by them that those dealers from whom the petitioner made purchase are registered dealers and that they have also filed their monthly returns to the respective Assessing Officer and paid tax. By saying so, the petitioner seems to have filed the registration details of those dealers by way of an enclosure as Annexure-II, vide reply dated 17.06.2014. However, the Assessing Officer has passed the impugned assessment order by observing that the petitioner failed to produce the supporting documents and also failed to establish that the other end dealers have paid the tax.

6. The learned counsel for the petitioner submitted that the above finding rendered by the Assessing Officer is factually incorrect, since the petitioner's reply contained the details of the registration of the other end dealers and therefore, it is for the Assessing Officer to ascertain those details to come to the conclusion as to whether they are the unregistered dealers as claimed by the Revenue or registered dealers as claimed by the petitioner. He further submitted that the petitioner is

having enough and sufficient material documents in support of their case and therefore, the Assessing Officer may be directed to consider those documents by giving one more opportunity to the petitioner.

7. The learned Government Advocate, on the other hand, submitted that it is for the petitioner to produce the supportive documents at the time of hearing, which they failed to do so. Therefore, she contended that the petitioner cannot seek for further indulgence. However, she fairly admitted to the position that the Assessing Officer has not stated anything about the registration details furnished by the petitioner by way of Annexure-II vide reply dated 17.06.2014, in the order of assessment.

8. Considering the above stated facts and circumstances and further considering the fact that the only issue to be considered and decided is as to whether the other end dealers are registered dealers or not, this Court is of the view that the matter can be remitted back to the Assessing Officer to reconsider such issue based on the materials already placed by the petitioner by way of Annexure-II vide reply dated 17.06.2014 and also by looking into further details to be furnished by the petitioner.

9. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment after giving one more opportunity to the petitioner and also by considering the details of registration furnished by the petitioner by way of Annexure-II vide reply dated 17.06.2014. The whole exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. The petitioner shall also furnish further details/documents before the Assessing Officer to pass fresh orders as stated supra. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The Assistant Commissioner (ST),
   Alandur Assessment Circle,
   Chennai - 600016.

2. The Manager,
   City Union Bank Ltd,
   No.77 Station Road, Ist Floor,
   Radha Nagar,
   Chrompet, Chennai - 600 044.

+1cc to Thiru.ANR.Jayaprathap, Advocate sr.84951
+1cc to the Special Government Pleader sr.84691

W.P.No.32444 of 2018

mr[co]
srg 03/01/2019