IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.33140 of 2018
and
W.M.P.No.38438 of 2018

Sterling and Wilson Pvt.Limited
Rep. By its DGM – Accounts
& Commercial, Mr.K.Anand Babu,
No.72, I & II Floors,
Ekkatuthangal – Poonamalle Road,
Chennai – 600 032. ...Petitioner

Vs

The Assistant Commissioner (CT),
Ekkatuthangal Assessment Circle,
No.46, Greanways Road,
Chennai – 600028. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN/33610843074/2013-14 dated 03.09.2018 and quash the same and further direct the respondent to consider our objections for input tax credit reversal.

For Petitioner : Mr.P.V.Ravikumar

For Respondents: Mr.V.Haribabu
Additional Government Pleader (Tax)

O R D E R

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the revised order of assessment dated 03.09.2018 passed in respect of assessment year 2013-2014.

3. The main grievance of the petitioner before this Court is that the Assessing Officer did not give an opportunity of personal hearing to the petitioner before concluding the

assessment, even though this Court has specifically directed the Assessing Officer to give such opportunity in the order passed by this Court in WP.No.34128 of 2015 dated 18.02.2016. The other contention raised is that the Assessing Officer reversed the ITC under Sections 19(5)(a) and 19(5)(12) of the Tamil Nadu Value Added Tax Act, 2006, even though the petitioner has filed the certificates from SEZ units for a value of Rs.4,94,46,003/-, which was verified by the Assessing Officer and found to be in order, thereby, granting zero rate on the above said turnover. Thus, the learned counsel for the petitioner submitted that had the Assessing Officer given the opportunity of personal hearing to the petitioner, he would have explained the position to the Assessing Officer in detail.

4. It is seen that the very same petitioner has already filed a writ petition before this Court in WP.No.34128 of 2015, challenging the order of assessment dated 08.07.2015 passed in respect of the very same assessment year 2013-2014. This Court, by order dated 18.02.2016, disposed the said writ petition, by setting aside the said order of assessment dated 08.07.2015 and remitting the matter back to the Assessing Officer for fresh consideration. While doing so, this Court has specifically directed the Assessing Officer to consider the certificates produced by the petitioner and decide the matter afresh, after giving an opportunity of personal hearing. Thereafter, the present impugned order was passed, however, without affording an opportunity of personal hearing to the petitioner. Therefore, it is evident that the Assessing Officer has not followed the order passed by this Court in WP.No.34128 of 2015 dated 18.02.2016 in its strict sense.

5. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. The petitioner is given liberty to file additional objections, if any, before the Assessing Officer. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT),
Ekkatuthangal Assessment Circle,
No.46, Greanways Road,
Chennai - 600028.

+1cc to Mr.P.V.Ravikumar, Advocate, S.R.No.85691
+1cc to the Government Pleader, S.R.No.87100

W.P.No.33140 of 2018

CP(CO)

rrs 22/01/2019