IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.33729 of 2018
and
W.M.P.No.39146 of 2018

Tvl.Shankar Timber Depot,
Represented by its partner
Mr.Bharath B Patel
Door No. Old No.551/New No.291,
Nehru Timber Market, Sydenham's Road,
Choolai, Chennai - 600 112 ...Petitioner

vs.

The State Tax Officer,
Choolai Assessment Circle,
2nd Floor, Palaniyappa Maligai,
No.10 Greams Road, Chennai - 6. ...Respondent

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 respondent TIN/33430500375/2015-2016 dated 23.11.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar
For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the 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 23.11.2018 passed in respect of assessment year 2015-2016.

3. The grievance of the petitioner against the impugned order is that the same was passed beyond the scope of the notice of proposal and by stating a new reason, for which, the petitioner was not issued with any notice of proposal.

4. The learned counsel for the petitioner contended that when the notice of proposal has dealt with only mismatch issue, the Assessing Officer has passed the impugned order of assessment on a different reason viz., the registration of the other end dealer M/s.Shree Umaiyal Timber & Sawmill has been cancelled with effect from 30.01.2015. Therefore, the learned counsel contended that the reversal of ITC based on the said reason, cannot be sustained, in the absence of any notice of proposal to that effect.

5. The learned Government Advocate fairly submitted that there was no notice of proposal on the above said issue viz., purchase made from the registration cancelled dealer. Therefore, she submitted that the matter may go back to the Assessing Officer to re-do the assessment.

6. Heard both sides.

7. Perusal of the notice of proposal dated 16.10.2018 would clearly indicate that the same has dealt with only mis-match issue and not the other issue viz., purchase made from registration cancelled dealers. When such being the position, the Assessing Officer is not justified in passing the assessment order based on the reason that the petitioner has made the purchase from the dealer, whose registration has been cancelled with effect from 30.01.2015.

8. Therefore, this Court is of the view that the matter has to go back to the Assessing Officer to re-do the assessment once again on merits and in accordance with law. Since a different reason is stated in the impugned order, the petitioner shall treat the impugned order as a notice of proposal and file their objections within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections, the respondent/Assessing Officer shall give an opportunity of personal hearing to the petitioner. On completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law within a period of six weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni/mk

To

The State Tax Officer,
Choolai Assessment Circle,
2nd Floor, Palaniyappa Maligai,
No.10 Greams Road, Chennai - 6.

+1cc to Mr. D.Vijaya Kumar, Advocate, S.R.No. 88904
+1cc to the Special Government Pleader(Taxes), S.R.No. 89963

W.P.No.33729 of 2018

KJI(CO)
GN(23/01/2019)