BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.641 of 2018
and
WMP(MD)No.669 of 2018

Tamil Nadu Newsprint Papers Ltd,
Rep.by its Chief General Manager
(Finance),
P.Giridharan ... Petitioner

Vs.

The Assistant Commissioner (CT)(FAC),
Karur (East) Assessment Circle,
Karur. ... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the respondent herein in TIN.33383760524/2014-15, dated 13.12.2017, quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.K.Saravanan,
Government Advocate

O R D E R

The writ petitioner is a Government of Tamil Nadu undertaking. It is a manufacturer of printing paper. The writ petitioner is a assessee with the respondent. The issue on hand relates to the assessment year 2014-15. The writ petitioner filed monthly returns for the assessment year 2014-15 in Form-I as per Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006. The returns filed by the writ petitioner were deemed to have been assessed on 31.10.2015.

2.However, the respondent issued show cause notice dated 16.02.2017 pointing out that there has been improper availing of input Tax Credit and that therefore there shall be a reversal of such ITC to the tune of Rs.1,01,88,480/-. The writ petitioner submitted their reply by relying on the report of Chartered Accountant in Form-WW.

3.Thereafter, the respondent by the impugned order dated 13.12.2017 proceeded to confirm what was proposed in the show cause notice. The respondent in the impugned order would observe that the dealer's reply and their statement containing the reversal of ITC were verified and found to be correct and accepted. But, in the same breath, the respondent would add in the very next sentence that it was found that there was a short reversal of ITC to the tune of Rs.1,01,88,480/-.

4.The learned counsel appearing for the petitioner submitted that the impugned proceedings deserve to be quashed on two grounds. Firstly, the show cause notice dated 16.02.2017 did not contain the full particulars which the writ petitioner/assessee should have to meet. He drew the attention of this Court to the decision reported in ***(2017) 99 VST 343 (Mad) (JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai).*** The learned Judge held that the show cause notice issued in terms of Section 27(2) must disclose full particulars since the noticee is expected to know as to what is the case against him, which he has to respond. If the details furnished inadequate, the show cause notice cannot be said to be in consonance with Section 27(2) of the TNVAT Act. He would also point out that the final order passed by the respondent suffers from an internal contradiction. The respondent has not demonstrated as to how the explanation offered by the writ petitioner is not sustainable. On the other hand, the respondent would accept the explanation and also proceed to confirm the proposal set out in the show cause notice.

5.Per contra, Mr.K.Saravanan, learned Government Advocate appearing for the respondent contended that the writ petitioner has to avail the effective and efficacious alternative remedy of appeal and that therefore this Court should not entertain the writ petition at all.

6.This objection has been already dealt with by this Court in the above said decision. The settled legal posittion is that mere existence of alternative remedy would not automatically oust the jurisdiction of this Court under Article 226 of the Constitution of India. In this case, the learned counsel for the petitioner has convincingly demonstrated that the show cause notice which is the foundation for passing the impugned order is not in terms of Section 27(2) of the Act.

7.In this view of the matter, the impugned order as well as the show cause notice are quashed. The respondent is however at liberty to proceed afresh in accordance with law. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner
(CT)(FAC),
Karur (East) Assessment Circle,
Karur.

+ 1 cc TO Mr.N.Inbarajan , Advocate in SR No. 42967
+ 1 cc TO The Special Government Pleader in SR No. 43135

Skm
AE/JC/SAR4/07.02.2018/3P/4C

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