IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.4157 and 4158 of 2010
and
M.P.Nos.1 and 1 of 2010

Tvl.S.K.Electricals
Rep by its Partner,
Mr.Sudersan Fomra,
137,Govindappa Naicken Street,
Chennai - 1. ... Petitioner in both the WPs

Vs

Assistant Commissioner (CT),
Sowcarpet - III Assessment Circle,
191, N.S.C Bose Road,
Chennai - 1. ...Respondent in both the WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the respondent in Ref: TIN33740260372/(1-1-2007 to 31-3-2007) and TIN33740260372/(1-4-2007 to 31-3-2008) respectively dated 29.01.2010 and quash the same.

For Petitioner : Mr.S.Prabhakaran

For Respondent : Mr.Mohammed Sherif
Special Government Pleader (T)

COMMON ORDER

The petitioner has come up with these writ petitions to quash the assessment orders dated 29.01.2010 relating to the periods from 1.1.2007 to 31.3.2007 and from 1.4.2007 to 31.3.2008 respectively.

2.The case of the petitioner is that they are the registered dealers in electrical goods. For the period from 1.1.2007 to 31.3.2007 and for the year 2007-08, they filed their returns and also paid the admitted tax, after availing input tax credit. The respondent completed the assessment and accepted the same. Thereafter, without properly verifying the documents submitted by the petitioner, the respondent issued respective show cause notices dated 09.11.2009 and 14.10.2009, proposing to revise the assessment by reversing the input tax credit and levy penalty. On receipt of the same, the petitioner submitted their detailed replies with the necessary documentary evidence in support of their claim. However, without considering the same and the reports of the enforcement wing authorities, passed the impugned orders dated 29.01.2010 revising the sales and purchase turnovers and reversing the input tax credit and demanded the proposed tax and penalty. Aggrieved over the same, the petitioner is before this Court with the present writ petitions.

3.The learned counsel for the petitioner submitted that the respondent, without considering the objections in the light of the documentary evidence and also the relevant provisions of law, has mechanically passed the impugned orders. According to the learned counsel, as per Rule 10(6)(b)(ii)(c) of the TNVAT Rules, the petitioner is entitled to receive credit notes for discount or sales without disturbing the tax component, so as to retain the input tax credit availed by them. Hence, the orders impugned herein are arbitrary, illegal and against the provisions of law.

4.Per contra, the learned Special Government Pleader appearing for the respondent made his submissions to support the orders impugned herein.

5.Heard both sides and perused the records.

6.The challenge made in these writ petitions is to the assessment orders passed by the respondent dated 29.01.2010 for the periods from 1.1.2007 to 31.3.2007 and from 1.4.2007 to 31.03.2008.

7.The grievance of the petitioner is that the respondent, without looking into the documents produced by the petitioner and without providing an opportunity to produce all the credit notes available with them, passed the impugned orders, which are arbitrary, illegal and against the principles of natural justice.

8.Though the learned Special Government Pleader made his contentions supporting the assessment orders passed by the respondent, he fairly submitted that the impugned orders came to be passed, without perusing the credit notes issued by the sellers to the petitioner. Further, the orders impugned herein do not disclose the details of the documents, based on which, the respondent passed the same.

9.When such being the case, this Court is of the view that the respondent passed the assessment orders for the periods in question, without ascertaining the documents and granting sufficient time to the petitioner for production of credit notes received from the sellers, in support of their stand. Hence, this Court, to meet the ends of justice, sets aside the orders impugned herein and remand the matter to the respondent for fresh consideration.

10.Accordingly, the orders dated 29.01.2010 passed by the respondent are set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to submit all the required documents, including the credit notes available with them, to the respondent within a period of two weeks from the date of receipt of a copy of this order. On such submission, the respondent shall consider the same and pass fresh assessment orders, for the periods in question, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks therefrom.

11.Both the writ petitions stand allowed to the extent as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner (CT),
Sowcarpet - III Assessment Circle,
191, N.S.C Bose Road,
Chennai - 1.

+2cc to Mr.S.Prabhakaran, Advocate, S.R.No. 2007
+1cc to the Special Government Pleader(Taxes), S.R.No. 2208

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SJ(CO)
GN(10/05/2019)