IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2019

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.P.Nos.24394 and 24480 of 2015
and
M.P.Nos.1 and 1 of 2015

Kantilal N.Shah ..Petitioner in both WPs

Vs.

The Commercial Tax Officer
Office of the Assistant Commercial (CT),
Evening Bazaar Assessment Circle,
Chennai. ..Respondent in both WPs

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the record in TIN Nos: TIN/33490340777/2012-2013 and TIN/33490340777/2013-2014 dated 06.07.2015 on the file of the respondent and quash the same as arbitrary, without jurisdiction, error apparent on the face of the record and against the law.

(In both WPs)
For Petitioner : Mr.M.Sunil Kumar

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

O R D E R

Heard Mr.M.Sunil Kumar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Tax) for the respondent.

2. Two orders of assessment for the periods 2012-2013 and 2013-2014, both dated 06.07.2015, are impugned before me. There was a surprise inspection in the premises of the petitioner on 16.06.2014, pursuant to which, a show cause notice dated 10.03.2015 was issued. The notice alleged purchase omissions, both on account of imports as well as non-reconciliation of details of purchases between the returns and balance sheet and proposed reversal of the input tax credit on interstate sales without C forms along with penalty under Section 27 of the Act.

3. The petitioner filed a reply dated 20.03.2015, denying the allegations and pointing out that the transactions had been duly reported in the returns and offered to tax. According to the petitioner, there were two import consignments during the period 2013-14, the goods imported had been sold and the turnover offered to tax. The petitioner contended that some part of the goods were not been taken delivery of but were still lying in the CFS.

4. The petitioner argues that the additions in regard to the transactions of import are liable to be deleted, since the consignment was substantially delayed, and upon arrival, detained in the CFS.

5. I do not propose to delve into these explanations, being pure questions of fact. A perusal of the show cause notice, reply and order of assessment make it apparent that the discrepancies noted by the authorities as well as the objections raised refer to several factual matters and it is only upon an appreciation of the same can the disputes be resolved.

6. Discrepancies in the valuation of consignments and taxability thereof, are not matters that this Court can look into under Article 226 of the Constitution of India. Thus, while the petitioner can certainly challenge the order as being incorrect in its appreciation of transactions in question, there is no perversity on facts or errors in law that is made out before me.

7. I am thus of the view that this is a matter where the petitioner should avail the statutory appellate remedy before the Appellate Assistant Commissioner. Since the petitioner has enjoyed an interim stay for some time, in the interests of justice, the petitioner is granted liberty to file an appeal before the 1st appellate authority, if it so desires and such appeal, if presented with pre-deposit and in accordance with law within a period of two weeks from today, shall be received by the registry of the appellate authority without reference to limitation and taken up for hearing and adjudication and disposal as expeditiously as possible, seeing as the assessments relate to the periods 2011-2012 and 2012-2013.

8. Both writ petitions are disposed in the above terms. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Office of the Assistant Commercial (CT),
Evening Bazaar Assessment Circle,
Chennai.

+4CCs to Mr.M.Sunil Kumar, Advocate, SR.No.76998 & 76999
+2cc to the Spl.Govt.Pleader, (Taxes) Vide Sr.No.76920 & 76921

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and
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Kak(10/09/2019)