IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.27051 of 2019
and
WMP.Nos.26431 & 26434 of 2019

Tvl.Om Sakthi Agencies
Rep. by M.Rangarajan (Proprietor)
No.3/60-C, Sadhakkathula Complex
Thirupoondi
Nagapattinam District. ...Petitioner

vs.

The Deputy Commercial Tax Officer
Nagapattinam Assessment Circle
Commercial Taxes Buildings
Court Campus, Veliyapalayam
Nagapattinam. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent in TIN.33203903310/2016-2017 vide impugned notice dated 31.05.2017 for the assessment year 2016-2017 culminating in the consequential order dated 21.09.2017 and quash the same as erroneous and consequently, direct the respondents to conduct fresh enquiry by affording personal hearing to the petitioner.

For Petitioner : Mr.K.Kulandaivelu

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

O R D E R

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

2. The petitioner is aggrieved against the order of assessment dated 21.09.2017 relevant to assessment year 2016-2017.

3. Heard both sides.

4. The Assessing Officer issued the notice of proposal dated 31.05.2017 alleging that the petitioner had claimed Input Tax Credit to the tune of Rs.65,019/- against purchases of Rs.5,89,298/- and however, the corresponding sales have not been reported by the sellers in the Annexure-II of the monthly returns. Therefore, the Assessing Officer proposed to revise the Input Tax Credit claimed by the petitioner to the tune of Rs.65,019/- along with penalty at 100%. After notice, the petitioner filed their reply along with xerox copies of the invoices. However, the Assessing Officer passed the impugned order of assessment only on the reason that the petitioner did not produce the original purchase invoices for verification, in support of their claim. Challenging the said order of assessment, the present writ petition is filed.

5. It is stated that non-production of the original purchase invoices before the Assessing Officer was not willful or deliberate and on the other hand, the Proprietor of the petitioner-Firm was physically engaged with his ailing daughter, who was diagnosed having blood cancer at the relevant point of time. Therefore, it is stated before this Court by the learned counsel for the petitioner that, if one more opportunity is given to the petitioner, he will produce those invoices in original and satisfy the Assessing Officer.

6. Considering the above stated facts and circumstances, more particularly, the reason assigned by the Assessing Officer to reverse the Input Tax Credit viz., non-production of the original invoices, this Court is of the view that one more opportunity shall be granted to the petitioner owing to the reasons stated by the petitioner at the relevant point of time for such non-production.

7. Accordingly, without expressing any view on the merits of the claim made by both sides, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment, after giving an opportunity of hearing to the petitioner to produce the original invoices. The petitioner shall produce such original invoices before the Assessing Officer, within a period of two weeks from the date of receipt of a copy of this order. On production of such invoices and after conducting personal hearing, the Assessing Officer shall pass fresh orders on merits and in accordance with law within a

period of four weeks, thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

mk

To
The Deputy Commercial Tax Officer
Nagapattinam Assessment Circle
Commercial Taxes Buildings
Court Campus, Veliyapalayam
Nagapattinam.

+1cc to Mr.K.Kulandaivelu Advocate, S.R.No.78585
+1cc to the Government Pleader, S.R.No.78991

CP(CO)
CB(16/09/2019)

W.P.No.27051 of 2019