BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.08.2019**
CORAM:
THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
W.P.(MD)No.13162 and 13163 of 2015
and
M.P.(MD)No.1 and 1 of 2015

Tvl.Krishna Electricals,
Represented by its Proprietor,
T.Ravtaram, S/o.Tejaramji,
No.58, Sathyamoorthy Street,
Thirunelveli Town - 627 006. ... Petitioner in both W.P.s

/Vs./

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Deputy Commercial Tax Officer,
Thirunelveli Bazaar Assessment Circle,
Commercial Tax Building,
Reserve Line Road, Palayamkottai,
Thirunelveli Distirct - 624 002. ... Respondents in both W.P.s

COMMON PRAYER:- Writ Petitions - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33325641969 / 2013-14 dated 25.03.2015 and quash the same and to consequently direct the 2nd respondent to re-do the assessment afresh giving adequate opportunity to the petitioner.

For Petitioner : Mr.R.Narayanan
For Respondents : Mr.A.Thiyagarajan
Government Advocate
(in both petitions)

COMMON ORDER

Curiously, two orders of assessment both dated 25.03.2015 had been passed by the assessing officer in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') in relation to the same period i.e., 2013-14.

2.A pre-assessment notice dated 19.02.2015 was issued proposing the reversal of Input Tax Credit (in short 'ITC') of an amount of Rs.1,05,147/-, out of total ITC claimed of Rs.3,23,514/-. The notice contained details of dealers in respect of transactions where ITC was proposed to be reversed.

3.The assessee filed a response on 12.03.2015 reconciling ITC with the purchases in respect of the 7 dealers in the annexures, in respect of the sum of Rs.1,05,147/- proposed to be rejected by the assessing officer. The dealer had, infact, claimed ITC of a sum of Rs.1,34,520/- and thus, the purchase details i.e., bill number, date and the amount of transaction in respect of the entire ITC claim of Rs.1,34,520/- were set out. No personal hearing has been afforded in the matter.

4.Instead and straight away, the assessing authority passes first, an order dated 25.03.2015 confirming the proposal in the notice except to an extent of a sum of Rs.1,058/- in respect of which according to him, the explanation was satisfactory. As regards the balance, the proposal was confirmed.

5.The officer states that only xerox copies of the bills were filed. However, this could well have been corrected had the assessing authority sought the original bills as well as other details that he required in terms of Rule 10(2) of the VAT Rules. This was not done.

6. In these circumstances, I have no other option but to set aside the assessment directing the assessing authority to re-do the same in accordance with law and in accordance with Circular No.3 of 2019 dated 18.01.2019.

7. As far as the second order is concerned, it clearly appears to be an afterthought. The only difference between the two orders is that in the second order the assessing authority has reversed the amount of ITC as per the written objection filed by the petitioner. No notice has, admittedly, been issued as far as the second order is concerned. Thus, order dated 25.03.2015 raising a demand of Rs.1,34,520/- and penalty of Rs.67,260/- is quashed.

8. The Writ Petitions are disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Deputy Commercial Tax Officer,
Thirunelveli Bazaar Assessment Circle,
Commercial Tax Building,
Reserve Line Road, Palayamkottai,
Thirunelveli Distirct - 624 002.

+1 CC to M/s.B.ROOBAN, Advocate (SR-76823,79160[F] dated 23/07/2019)

+1 CC to M/s.SPL GP (SR-79482[F] dated 02/08/2019)

Common Order made in
W.P.(MD)No.13162 and 13163 of 2015
Dated:
01.08.2019

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