(2014) 10 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No. 23883 of 2014 and MP. No. 1 of 2014

R.C. Golden Granites (P) Ltd. APPELLANT

Vs

The Assistant Commissioner RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0061

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—In this writ petition, the petitioner challenged the order passed by the first respondent dated 10.6.2014 under the provisions of Tamil Nadu Value Added Tax Act 2006, for the assessment year 2009-2010.

2. The petitioner company is registered under the Companies Act and as an assessee on the files of the respondent herein under the Tamil Nadu Value Added Tax Act, 2006 as well as the Central Sales Tax Act, 1956 and is engaged in manufacturing and export of all kinds of Granite Monuments and having factory at No. 124, Mangalam Village, Madurantagam Taluk, Kancheepuram District. While so, the place of the petitioner''s business was inspected by the officials of the Enforcement Wing on 11.5.2010 and report was filed. On the basis of the inspection report, show cause notice was issued on 4.3.2014, proposing to reverse the input tax credit (ITC) made by the petitioner. Apart from the proposal, penalty under section 27(4) will be levied.

3. The petitioner submitted its reply/objection, pointing out that in the notice, the first respondent has proposed to reverse the input tax credit on ineligible goods. But, the petitioner would state that the only ineligible item claimed was the purchase of motor car and all other goods are inputs for manufacturing output for exports and therefore, the petitioner objected the reversal of ITC. Apart from that, the petitioner mentioned the balance ITC carry forward as on 1.4.2010. As regards the proposal for levy of penalty, the petitioner submitted that 100% Export Oriented Unit was started during 2007 inspite of so many

hurdles like labour problem, non availability of required rough blocks, increasing cost of all raw materials and cost of power and fuel and they were able to run the Unit successfully only with the active support from the Government and remit all statutory dues in time for all these years and that, any let out or claim for ineligible items would be only due to lack of knowledge regarding newly introduced VAT Rules and therefore, requested that penalty should not be levied. However, the first respondent passed the impugned order.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

5. The first respondent in the impugned order, did not refer to the entire reply given by the petitioner dated 10.3.2014, but extract one portion of the reply, which dealt with the proposal for levy of penalty alone. In fact, in the first page of the objection, the petitioner has stated that they availed ITC on goods which are inputs for manufacturing output for exports and they are not ineligible items. This aspect has not been considered by the first respondent. Further more, the first respondent passed the impugned order simply based on the statement given by the employee of the petitioner to the Enforcement Wing Officials.

6. In my considered view, if there is a proposal given by the Enforcement Wing officials, as D3 proposal, the same could be treated as fact finding proposal. When the Assessing officer proposes to revise the assessment, based on such proposal and issue show cause notice, in response to which, the assessee files its reply, then the Assessing officer is bound to independently assess the matter, that is the assessment procedure to be adopted before revising the assessment and the same cannot be mechanically done, by placing reliance on the statement or material collected by the Enforcement wing officials during inspection, without reference to the petitioner''s explanation. That apart, while levying penalty, the petitioner is entitled to reasonable opportunity. Admittedly, show cause notice issued to the petitioner did not specifically state as to why the items in question are ineligible for claiming ITC. Therefore, if an opportunity of personal hearing had been given to the petitioner, they would have able to establish their stand, by producing records. Thus, for the reasons stated above, this court is of the view that the impugned order calls for interference by this court.

7. In the result, the writ petition is allowed and the impugned order passed by the first respondent is set aside. The matter is remitted back to the first respondent for fresh consideration. The first respondent shall give an opportunity of personal hearing to the petitioner, within two weeks from the date of receipt of the copy of this order and thereafter, shall consider the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

