IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.8.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.A.Nos.844 to 847 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.MLB Associates,
rep. by its Partner,
New No.48, Old No.64,
Sembudoss Street,
Chennai 600 001. Appellant in all W.A.s

vs.

The Assistant Commissioner (CT)
Broadway Assessment Circle,
Chennai 600 001. Respondent in all W.A.s

Writ Appeal U/Clause 158 letters patent against the order dated 29.4.2015 passed in W.P.Nos.13142 to 13145 of 2015.

W.Ps.13142 to 13145/2015: These Writ Petitions have been filed under Article 226 of the constitution of India to issue on order of Writ of certiorari, to call for the impugned proceedings of the respondent in TIN/33660041099/2010-2011,2011-2012,2012-2013 & 2013-2014 and quash the impugned order dated 13.3.2015 as passed contrary to the provisions of the TNVAT Act without granting reasonable opportunity to the petitioner and also opposed to the law laid down by the Honourable Supreme Court in the case of the State of Maharastra Vs Suresh Trading Company reported in 109 STC 439 and the Honourable Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintaripet Asst Circle reported in 59 VST 256 in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179 in the case of M/s. Sri Vinayaga Agencies reported in 60 VST 283 in the case of Aassan Global Trade in W.P.Nos.25996 to 25998/2014 and also in the case of M/s.Infiniti wholesale Limited in W.P.9265/2013 and to pass further orders.

For appellant : Mr.P.Rajkumar

For Respondents: Mr.S.Kanmani Annamalai, Govt. Advocate

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J. )

Challenging four separate orders passed on a single day viz., 13.3.2015, reversing the input tax credit claimed by the assessee for the assessment years 2010-11, 2011-12, 2012-13 and 2013-14, the appellant filed four writ petitions in W.P.Nos.13142 to 13145 of 2015. All those four writ petitions were dismissed even at the stage of admission by a learned Judge by order dated 29.4.2015 on the short ground that the appellant has an effective alternative remedy of appeal to the appellate Deputy Commissioner. Aggrieved by the dismissal of the writ petitions, in limine, the assessee is before us with the writ appeals.

2. Heard Mr.P.Rajkumar, learned counsel for the appellant and Mr.S.Kanmani Annamalai, learned Government Advocate (Taxes) for the respondent.

3. It is no doubt true that when an effective alternative remedy is available under the statutory prescription, this court will not, normally, entertain the writ petitions. But, this general rule is not without exception. Where there are allegations of violation of principles of natural justice and where the very jurisdiction of the authority is questioned, this court will not hesitate to exercise the jurisdiction under Article 226, despite the availability of alternative remedy.

4. In the case on hand, the assessing officer served a single notice dated 26.12.2014. This single notice did not indicate as to whether the notice was in respect of a particular assessment year or more. However, the reference found on the top of the notice showed that it was in relation to the assessment years 2011-12 to 2014-15.

5. In the first paragraph of the notice dated 26.12.2014, the assessing officer stated that on a scrutiny of the monthly return filed by the Dealer from April 2014 to October 2014 and upon further verification of the monthly returns filed right from the date of registration, the Dealer was found to have effected total purchase of Rs.3,23,04,815/- and claimed ITC to some extent. Para 1 of the notice also speaks about Annexure 1. Therefore, even if we consider the single notice to have effectively communicated what the assessing officer wanted to assess, the ultimate orders passed, again, go beyond the details contained in Annexure 1.

6. A look at Annexure 1 shows that the same covered returns filed from march 2011 to September 2013. Therefore, the reference to assessment years 2011-12 to 2014-15 could not be taken to be precise.

7. Moreover, in the third but last para of the notice, the proposal made by the assessing officer was only to reverse the input

tax credit to the total extent of Rs.1,61,043/-. Even if the appellant had refused, deliberately, to reply to the notice, the proposal contained in the notice alone could have been confirmed and nothing more could have been done. But, unfortunately, the single notice dated 26.12.2014, ultimately resulted in four independent orders, reversing the input tax credit to the extent of Rs.99,212/- in relation to the assessment year 2010-11, reversing the input tax credit to the extent of Rs.13,70,147/- in relation to the assessment year 2011-12, reversing the input tax credit to the extent of Rs.24,500/- in relation to the assessment year 2012-13 and reversing the input tax credit to the extent of Rs.92,551/- in relation to the assessment year 2013-14.

8. Therefore, it is so obvious that the ultimate orders passed were not correlatable to the single notice issued on 26.12.2014. In other words, there has been an order without a proper proposal. This goes to the root of the issue and the orders suffer from lack of jurisdiction and the violation of principles of natural justice.

9. Therefore, the writ appeals are allowed. The order of the learned Judge is set aside. The four orders dated 13.3.2015 are set aside. It will be open to the assessing officer to issue fresh notice in the manner known to law. The assessee shall, positively, give a reply to the notice, if issued and participate in the proceedings, without any excuses. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

ssk.

To

The Assistant Commissioner (CT)
Broadway Assessment Circle,
Chennai 600 001.

+1 cc to Special Government Pleader(Taxes), sr.45604.
+1 cc to Mr.P.Rajkumar, Advocate, sr.57443 (19/10/2015)

W.A.Nos.844 to 847 of 2015

ca co
kra 25/09