IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.10169 of 2014 &

MP No.2 of 2014

M/s Madan Agencies
rep. by its Proprietor-J.Sumathikumar
Vellore. .. Petitioner

Versus

The Assistant Commissioner (CT) FAC)
Vellore (Rural),
Vellore.

.. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records on the file of the respondent in his impugned Proceedings made in TIN No.33904323323/2012-2013 dated 28.02.2013, and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.Kanmani Annamalai
Addl. Government Pleader(T)

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O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner is a dealer in general goods and assessee on the file of the Assistant Commissioner (CT) (FAC), Vellure (Rural), Vellore. For the assessment year 2012-13, the petitioner filed monthly returns in Form I with annnexures I &

II, reporting a total and taxable turnover of Rs.33,92,28,479/- and during year under reference, the petitioner claimed Input Tax Credit amounting to Rs.3,15,32,012/- and adjusted ITC towards Output tax due to the extent of Rs.3,10,45,118/-.

3.The respondent issued a notice dated 22.08.2013, stating that on verification of the monthly returns, it was found that the Input Tax Credit amount claimed has not reached the Government Exchequer, as the purchases were not reported by their seller. Therefore, the respondent proposes to reverse the availment of Input Tax Credit, apart from proposing to levy penalty.

4.The petitioner submitted their objections on 21.09.2013, stating that they have claimed all input tax credit, according to the purchases they have made during the year and they attached the bill details for the consideration of the respondent.

5.It appears that the opportunity of personal hearing was not granted to the petitioner, though the petitioner specifically pleaded for opportunity of personal hearing. Unfortunately the respondent proceeded to frame the assessment stating that the invoice copies have been verified with the website records and found that they have not been shown in the annexure. Further, it was found that dealers TIN Numbers were not specified in the invoices. Thus, in the absence of proof of payment of tax at other end, incorrect invoice copies, the objection raised by the petitioner was rejected and proposal in the pre-revision invoice was confirmed. The respondent also levied penalty under section 27(4)(ii) of the Act.

6.In the counter affidavit filed by the respondent, the stand taken in the impugned order has been reiterated, apart from mentioning the facts relating to the transactions effected by the petitioner.

7.On a perusal of the transactions done by the petitioner with the various parties, as mentioned in the impugned order, it is seen that the petitioner has dealt with certain Companies which are stated to be the blue-chip Companies and it is rather surprising to note that their TIN Numbers were not specified in the invoices. Even assuming that it is true, nothing prevented the Assessing Officer to direct the petitioner to produce the original invoices, the books of accounts and other details and thereafter frame the assessment. The process of assessment has to be done with dialog and discussion. The Assessment Officer has adopted a summary procedure treating the assessee as an adversary. If such exercise had been done, this Writ Petition itself could have been avoided and the appropriate revenue which the Government is entitled to could have been arrived at. However, on account of improper procedure, having been adopted by the Assessing Officer, has resulted in the matter coming before this Court, by way of this Writ Petition.

8.At this stage, it would be worthwhile to point out that in the case of ALTHAF SHOES (P) LTD., v. ASSISTANT COMMISSIONER (CT), VALLUVARKOTTAM ASSESSMENT CIRCLE, CHENNAI-6 [(2012) 50 VST 179(Mad)], wherein it has been held that a perusal of Rule 10 of the Tamil Nadu Value Added Tax Rules, 2007, read along with Section 19(1) of the Tamil Nadu Value Added Tax Act, 2006, made it clear that so long as the purchasing dealer had complied with the requirements as given under rule 10(2), the claim of the purchasing dealer could not be denied by the Department. Further, the Court took into consideration, the Circular issued by the Commissioner which clearly stated that so long as the vendor was not found to be a registered dealer on the files of the Department, the claim of the dealer for refund could not be rejected not delayed. Further, it was pointed out that the mere fact that the Department had not made an assessment on the dealer's vendor, per se, could not stand in the way of the assessing officer considering the claim of the dealer under section 19 of the Act. Further, it was held that going by section 17 of the Act, which provided that the burden on the purchasing dealer rested to the extent of showing that he was not liable to tax under the Act and read in the context of the fact that the petitioner-dealer had given his sellers' TIN number and had also produced the invoices evidencing the purchase of materials paying tax, the Department could not successfully canvass its claim that the petitioner was not entitled to have the refund. In the instant case it was admitted that the petitioner's vendors were all registered dealers on the files of the Department and that petitioner had also given the TIN number of these vendors. When such particulars were available, it was for the Department to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Department could not deny the claim of the petitioner.

9.However, the learned counsel pointed out that the proviso under section 19(1) was substituted by the section 8 of second amendment of Rule 13 of 2015, which came into effect only on 29.01.2016. Therefore, the Assessing Officer cannot fall back on the substituted proviso which came subsequently i.e. subsequent to the assessment order in question which is 2012-13.

10.In the light of the above, the Writ Petition is allowed, the impugned order is quashed and the matter is remanded to the respondent for fresh consideration, who shall issue notice to the petitioner, afford an opportunity of personal hearing, verify all the records and if any further particulars are required from the petitioner, the same may be called for and after considering all the issues, the respondent is directed to redo the assessment order in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa

To

The Assistant Commissioner (CT) FAC)
Vellore (Rural),
Vellore.

+1 cc to Ms.R.Hemalatha Advocate sr.41707
+1 cc to special Government Pleader sr.41920/16

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