IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.7.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.30722 of 2015 & MP.No.1 of 2015

M/s.Amar Communication, rep.
by its Manager Jitendra Jain ...Petitioner

Vs

The Assistant Commissioner (CT)
Kodambakkam Assessment Circle,
Greams Road, Chennai-6. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the assessment order TIN/33310863027/2008-2009 dated 31.8.2015 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.S.Manohar Sundaram, AGP

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a dealer in mobile phones registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. In this writ petition, the petitioner challenges an order dated 31.8.2015 wherein the respondent, while completing the assessment for the year 2008-09, accepted the sales return only to a partial extent and rejected the remaining.

3. In the impugned order, broadly there are two reasons for disallowing the sales turnover, firstly on the ground that it is a previous year's sale and secondly on the ground that details were not furnished.

4. Learned counsel for the petitioner submits that in so far as the second ground is concerned, the petitioner may be provided an opportunity to furnish the details, since the assessment was finalized without a personal hearing. On the first ground namely 'previous year's sale', it is submitted that the respondent ought to have examined the sales return in accordance with the Tamil Nadu Value Added Tax Rules, 2007 and without following the procedure, the impugned assessment could not have been completed.

5. After hearing the parties and perusing the materials available on record, it would be first necessary to see as to in what manner, the Assessing Officer has to deal with sales return. This has been stipulated under Rule 10(6)(b) of the said Rules. In the instant case, we are only concerned about the sales return and not in respect of unfructified sale.

6. Therefore, what would be relevant for the present case is Rule 10(6)(b)(i) of the said Rules, which reads as follows :

> "Rule 10(6) :
>
> (b) Where a dealer, who sells goods after paying tax, receives back his goods, he may deduct such tax amounts paid from the tax payable in the returns of following months only when -
>
> (i) in respect of sales return
>
> (A) the sale was included in the return and the tax paid;
>
> (B) the goods were received back or returned within a period of six months from the date of sale;
>
> (C) the price of the goods and the tax, if any, charged thereon were refunded in full to the buyer; and
>
> (D) the credit note shall contain the date and serial number of the invoice, on which, the tax was originally charged and brought to account."

7. In terms of the above Rule, where a dealer, who sells goods after paying tax and receives back the same goods, he may deduct such tax amounts paid from the tax payable in the returns of following months only when four of the contingencies contemplated above are fulfilled namely the contingencies/conditions in Clauses (A) to (D).

8. On a perusal of the impugned order, it is not clear as to whether the respondent took note of Rule 10(6)(b)(i) of the said Rules, as the impugned order is not a narrative order, but, it

is in the form of a tabular column. Therefore, this Court is unable to ascertain as to the manner, in which, the respondent came to the conclusion that a portion of the sales turnover has to be disallowed. Thus, the impugned order is held to be a non speaking order and there is no clear indication that the respondent examined the petitioner's return in terms of the Rule above referred to.

9. Accordingly, the writ petition is allowed, the impugned order is set aside and the respondent is directed to redo the assessment, giving liberty to the petitioner to produce necessary documents in respect of the sales returns, which were rejected on the ground that the details were not furnished and in respect of the rejection on the ground that it is the previous year's sale, the respondent is directed to re-examine the said returns in accordance with Rule 10(6)(b)(i) of the said Rules after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT) Kodambakkam Assessment Circle,
Greams Road, Chennai-6.

1 cc to Mr.Joseph Prabakar, Advocate, sr.43377
1 cc to Special Government Pleader, sr.43343

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and MP.No.1 of 2015

bvr co
kra 16.08.2016