IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.7.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.32353 to 32357 of 2015

& MP.Nos.1,1,1,1 & 1 of 2015

M/s.Muthu Pharmacy Private Limited
rep.by its Director Mr.S.Srinivasan ...Petitioner in all the WPs

Vs

The Assistant Commissioner (CT),
Ayanavaram Assessment Circle,
Kilpauk, Chennai-10. ...Respondent in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in respectively in TIN : 33271002535/2009-10, TIN : 33271002535/2010-11, TIN : 33271002535/2011-12, TIN : 33271002535/2012-13 and TIN : 33271002535/2013-14, and quash the impugned proceedings dated 15.9.2015.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mr.S.Manoharan Sundaram, AGP

COMMON ORDER

Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioner is a dealer in medicines, registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the Act) and the Central Sales Tax Act, 1956. In these writ petitions, the petitioner challenges the orders of assessment for the years 2009-10 to 2013-14, based on the inspection conducted by the officials of the Enforcement Wing.

3. Three issues were pointed out namely (i) that the petitioner sold medicines at a lesser price than the purchase value, which should result in reversal of input tax credit under Section 19(20) of the Act; (ii) that the petitioner purchased medicines from registration certificate canceled dealers, for which, the claim of the input tax credit is not eligible; and (iii) that the petitioner's vendors have not reported sales made to the petitioner in their monthly returns.

4. So far as issue Nos.2 and 3 are concerned, the same have to be decided in favour of the petitioner in the light of the decisions of this Court in the cases of Jinsasan Distributors Vs. CTO (CT), Chintadripet Assessment Circle [reported in (2013) 59 VST 256 (Madras)] and Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani Assessment Circle, Chennai [reported in (2013) 60 VST 283]. This legal position is not disputed by the learned Additional Government Pleader. Therefore, the impugned assessment orders, in so far as issue Nos.2 and 3 are concerned, are liable to be quashed and are accordingly quashed.

5. In so far as the first issue is concerned, the petitioner would state that they have not sold the medicines at lower price, but sold them for higher price and that the details were submitted in CD form for all the six assessment years on 25.8.2015, 25.8.2015, 28.8.2015, 31.8.2015, 15.9.2015 and 22.9.2015.

6. In the counter affidavit filed by the respondent, the respondent would admit the receipt of the details in CD form, but it is stated that the CD was defective and that therefore, the respondent could not verify the same.

7. If the respondent found that the CD was defective, he could have very well directed the petitioner to produce appropriate data in proper format instead of finalizing the assessment in the manner done here. The finding rendered by the first respondent on issue No.1 is also quashed and the writ petitions are allowed. The matters are remitted back to the respondent for fresh consideration with a direction to the petitioner to produce the details in a CD form and ensure that the data is readable in the office of the respondent, after which, the respondent shall afford an opportunity of personal

hearing to the petitioner and redo the assessment only with regard to issue No.1, as this Court has quashed the assessments in respect of issue Nos.2 and 3. No costs. Consequently, the above WMPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

RS

To
The Assistant Commissioner (CT),
Ayanavaram Assessment Circle, Kilpauk, Chennai-10.

+1 cc to Mr.V.Sundareswaran Advocate sr.43213

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