IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 08.09.2016

Coram

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.34228 to 34233 of 2015
and M.P.Nos.1, 1, 1, 1, 1 & 1 of 2015

The Daily Thanthi
rep.by the Chief General Manager
[Administration], No.86, EVK Sampath
Road, Chennai 600 007. ... Petitioner in all W.Ps

..vs..

The Assistant Commissioner [CT]
Purasawalkam Assessment Circle
No.59, Tailors Road, Chennai 600 010. ... Respondent in all W.Ps

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India praying for writ of certiorari calling for the records of the respondent relating to the orders passed in Ref.TIN No.3328480039/2008-09 ; TIN No.3328480039/2009-10 ; TIN No.3328480039/2010-11 ; TIN No.3328480039/2011-12 ; TIN No.3328480039/2012-13 and TIN No.3328480039/2013-14 dated 28.09.2015 for the Assessment Years 2008-2009 to 2013-2014, quash the same.

For Petitioner in all writ petitions : Mr.V.Sanjeevi
For Respondent n all writ petitions : Mr.S.Kanmani Annamalai, Addl.Govt.Pleader [Taxes]

COMMON ORDER

Heard Mr.V.Sanjeevi, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader [Taxes] for the respondent and with the consent on either side, the writ petitions are taken up for disposal.

2 In all these writ petitions, the petitioner is the publisher of a Daily Newspaper who had been issued with notices by the respondent / Assessing Officer, stating that the scrutiny of the Returns filed for all the relevant Assessment Years, viz., 2008-09 to 2013-14, it is found that the petitioner has availed purchase of news print papers from the local registered dealer and availed Input Tax Credit [ITC]. That, in terms of section 2[21] of the Tamil Nadu Value Added Tax Act, 2006, [TNVAT Act], newspapers are not goods and the petitioner is not eligible to claim ITC on their purchases of news print papers. Therefore, the respondent proposed to reverse the ITC claim made by the petitioner for all the Assessment Years and also proposed to levy penalty u/s.27[4] of the TNVAT Act. The petitioner submitted their objections on 07.09.2015 wherein the petitioner, while accepting that the newspapers are excluded from the definition of goods and therefore, the corresponding ITC is to be reversed, they further stated that they are effecting purchase of news print papers from the local registered dealers and the Input Tax Credit is not claimed and what has been claimed is after appropriate reversal and restricting the total ITC. It is further stated that during the course of printing newspapers, they obtained print waste, print cut papers, which are liable to tax and which were sold in the course of business and the tax due was paid after adjustment of ITC. Further, the petitioner stated that they themselves have reversed the ITC for the sale of newspapers and reported in their Returns and what has been claimed by them is only the eligible credit after reversing the ITC. Therefore, the petitioner objected to the proposasl made by the respondent to reverse the entire ITC claimed by them. After setting out the above facts, the petitioner pointed out the legal position and requested the respondent to verify their accounts maintained in the course of business and take a decision after affording an opportunity of personal hearing. Pursuant to the objections given by the petitioner, another notice was issued by the respondent on 10.09.2015, stating that the petitioner have accepted that they have sold the news print, printed waste papers and news print cut papers as waste papers and liable to tax.

3 It is further stated that the sale of waster papers are liable to tax prior to Entry 96 of Part-B of Third Schedule to TNVAT Act and the printed newspapers are excluded from the definition of goods and therefore, the respondent proposed to confirm the reversal of the ITC and the ITC wrongly adjusted towards the output tax. An opportunity of personal hearing was fixed on 21.09.2015 and on the said date, the authorised representative of the petitioner appeared and a statement was recorded by the respondent from the said authorised representative, pursuant to which, the impugned orders have been passed.

4 The reason assigned by the respondent for confirming the proposal is only in the last paragraph of the Assessment Order, wherein the respondent has stated that the petitioner generally are collecting the unsold newspapers through their agent and selling them as waste papers along with news print waste obtained during the process of printing. However, there is no record to substantiate such a finding. On a perusal of the objections given by the petitioner dated 07.09.2015 as well as the statement given by the authorised representative of the petitioner on 21.09.2015, it is seen that at no point of time, they took a stand that they have collected unsold newspapers through their agent and selling the same as waste paper. The contention which has been raised by the petitioner is that they are effecting purchases of news print papers from the local registered dealers and nowhere they have stated that they purchased the unsold newspapers and are selling the same. In the absence of any record to substantiate such a finding, it has to be held that the reason assigned in the impugned order is unsustainable. Therefore, the impugned order call for interference.

5 In the result, the writ petitions are allowed and the impugned orders of the respondent dated 28.09.2015 made in Ref.TIN No.3328480039/2008-09 ; TIN No.3328480039/2009-10 ; TIN No.3328480039/2010-11 ; TIN No.3328480039/2011-12 ; TIN No.3328480039/2012-13 and TIN No.3328480039/2013-14 for the Assessment Years 2008-2009 to 2013-2014 are set aside and the matter is remanded to the respondent for fresh consideration and the respondent is directed to afford fresh opportunity of personal hearing to the petitioner, call for Books of Accounts and other materials from he petitioner and re-examine the entire factual matrix and then, re-do the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

08.09.2016

Index : yes / no
Internet : yes / no
AP

T.S.SIVAGNANAM, J.

AP

To

The Assistant Commissioner [CT]
Purasawalkam Assessment Circle
No.59, Tailors Road, Chennai 600 010.

WP.Nos.34228 to 34233/2015

08.09.2016