IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22219 to 22224 of 2016
&
W.M.P.Nos.18955 to 18960 of 2016

M/s.S.S.Bullion
Rep. by its partner Senthil Srinivasan
66, 1st Floor, Dharmaraja Koil Street
Coimbatore – 641 011 ..Petitioner in all WPs.

vs.

The Assistant Commissioner
Big Bazaar Street Circle
Coimbatore – 641 011 ..Respondent in all WPs.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent herein in TIN 33621842217/2008-09 2009-10, 2010-2011, 2011-2012, 2012-2013, 2013-2014and quash the order dated 29.01.2016 and 24.02.2016 (remaining WPs.)(WP.222198 & 22220 of 2016)

For Petitioner : Ms.L.Muralikrishnan

For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.L.Murali Krishnan, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondent. With the consent of learned counsel appearing on either side, the writ petitions themselves are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Valud Added Tax Act, 2006, deals in Bullion and they have challenged the Assessment Orders passed by the respondent dated 29.01.2016 for the years 2008-09, 2009-10 and 24.02.2016 for the years 2010-11, 2011-12, 2012-13 and 2013-14. The petitioner was issued with notice dated 12.02.2014 stating that they have

effected purchases in the month of June 2012 from M/s.Gajannanda Jewellary Maart Pvt. Ltd., Tiruppur and from October 2012 to December 2012 from Dugar Gold, Villupuram and that on verification of the other end dealers transactions through online, it is ascertained that the said dealers' Registration Certificates have been cancelled with effect from 02.01.2010 and therefore, the respondent propose to reverse the Input Tax Credit of Rs.16,21,29,804/- under Section 19(13) of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner submitted their objection on 01.03.2014 stating that insofar as Gajannanda Jewellary Maart Pvt., is concerned, they have used old TIN for the transaction and requested the respondent to change the TIN number and they have also enclosed the previous years bill for the reference of the respondent. Insofar as M/s.Dugar Gold is concerned, the petitioner stated that they have purchased the gold from Dugar Gold On 03.11.2011 bearing Bill No.718, but they have changed the TIN number without intimating the petitioner. Therefore, the petitioner contended that they have given the old TIN number. Another notice was issued by the respondent dated 18.07.2014 for the years 2007-08 to 2013-14 along which they have enclosed a list of other end dealers, whose Registration Certificates have been cancelled with effect from 01.04.2008 and 01.01.2014 and there was a proposal to reverse the Input Tax Credit of Rs.38,25,151/-.

4. The petitioner submitted their objection on 24.07.2014 followed by another letter containing a tabular statement in which the names of the other end dealers were mentioned along with their TIN Number, the relevant Assessment Year, the amount, tax and the reason assigned by the respondent and the reply. In the reply, it has been stated that the other end dealers has signed statements and they have enclosed the same. Couple of dealers have also issued a letter confirming the transaction between them and the petitioner.

5. The respondent, while completing the assessment, has referred to all the documents placed by the petitioner and after recording the stand taken by the petitioner, the respondent proposed to reverse the Input Tax Credit on the ground that moment details of commodity purchased have not been provided, Bank Statement in which cheques realized or debit entries made when online payments accepted and respective Certificate of Sufference of Tax from the Assessing Officer at the other end has not been furnished.

6. In my view, the manner in which the respondent has passed the impugned orders clearly shows that he has misdirected himself as well as the entire proceedings. As noticed above, the pre-revision notices were issued only on the ground that

other end dealers' Registration Certificates have been cancelled. From a perusal of the impugned orders, it prima facie appears that the respondent was satisfied with the documents produced by the petitioner since the respondent has not recorded any specific reason as to the admissibility or otherwise of the documents produced by the petitioner. Therefore, it can be presumed that the details furnished by the petitioner in the tabular form along with the other connected documents found favour with the respondent. If that was the case, then, if the respondent wanted some more documents, he should have called for those documents and should not have completed the assessment as done by him in the impugned proceedings. In fact, the respondent has also recorded the fact that the petitioner has accounted for the purchases and made payment through cheques or banks. If that is the case, if there is any doubt, the respondent could have called for the bank statement. Without doing so, the question of completing the assessment by stating that Bank Statement and Moment details were not given, is not tenable since there was no request made by the respondent to produce any of the documents and thus the impugned orders have been passed in violation of principles of natural justice as the respondent has proceeded to complete the assessment on totally different grounds than what was mentioned in the pre-revision notice. Accordingly, the petitioner is entitled to succeed.

7. In the result, the writ petitions are allowed and the impugned orders dated 29.01.2016 and 24.02.2016 are quashed. The matter is remanded to the respondent for fresh consideration and to redo the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

The copy of this order shall be communicated to the Principal Commissioner /Commissioner of Commercial Taxes, Chennai so that a Circular can be issued to the Assessing Officers as to how they should complete an assessment. In my view, the Assessing Officer has to adopt a assessee friendly approach so that the entire details are culled out from the assessee. It is not a one day affair to complete an assessment especially when complicated facts are involved. Therefore, during the course of assessment, if the Assessing Officer is not satisfied with the documents produced and requires some more clarification, then it is the duty of the Assessing Officers to call for such information. However, when this Court considered the validity of several Assessment Orders, pattern appears to be that when objection is filed to the pre-revision notice and documents are produced by the dealer at the time of personal hearing, the Assessing Officer appears to be convinced with the reply. However, with a view to some how complete the Assessment and levy tax and penalty or reverse the Input Tax Credit, the Assessing Officers proceed to complete the assessment on totally new set of grounds, which were not made known to the Assessee, either at the stage of pre-revision notice or during the personal hearing. Therefore, the Assessing Officers have to be sensitized with the manner in which they have to complete the assessment proceedings. This Court, therefore, would request the Principal Commissioner / Commissioner of Commercial Taxes to study the matter and issue appropriate circular to the Assessing Officers.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner
Big Bazaar Street Circle
Coimbatore - 641 001.

Copy to: The Principal Commissioner/Commissioner of Commercial Taxes, Chennai.

+1cc to Mr.L.M. Muralikrishnan, Advocate, S.R.No.37545

+1cc to the Government Pleader, S.R.No.37693

KS(CO)
EU(18/07/2016)

W.P.Nos.22219 to 22224 of 2016 &
W.M.P.Nos.18955 to 18960 of 2016