IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.27004 of 27010 of 2016 &
W.M.P.Nos.23202 to 23208 of 2016

Star Boxes India Private Limited,
Rep. by its Chief Financial Officer,
G.Hari Hara Subramanian,
Polivakkam Chatram, Polivakkam P.O.,
Thiruvallur-602 002. .. Petitioner in all Writ Petitions

Versus

The Assistant Commissioner (CT),
Tiruvallur Assessment Circle,
No.174, JN Road,
Thiruvallur - 602 001. .. Respondent in all Writ Petitions

Prayer in all Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN/33250541796/2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15, dated 12.07.2016 and quash the same, and further direct the respondent to redo the assessment on the above in accordance with law.

For Petitioner in all Writ Petitions : Mr.N.Murali

For Respondent in all Writ Petitions : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr.N.Murali, learned counsel appearing for the petitioner in all Writ Petitions and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of respondent in all Writ Petitions. With the consent of the learned counsel on either side, these Writ Petitions are taken up for final disposal.

2. The petitioner-Company, which is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006

(hereinafter referred as "TNVAT Act") and Central Sales Tax Act, 1956 (hereinafter referred as "CST Act"), has filed these Writ Petitions, challenging the orders of assessment passed under the TNVAT Act for the years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15, dated 12.07.2016.

3. The impugned orders have been challenged on the ground that the objections given by the petitioner, both, preliminary and final objections were not considered in an appropriate manner by the Assessing Officer and the reconciliation statements furnished by the petitioner were not taken into consideration. The major issues on which, the impugned assessment orders came to be passed are as hereunder:-

> "A. Alleged Difference between purchase turnover as per balance sheet and monthly returns.
>
> B. Alleged Difference between the sales turnover as per balance sheet and monthly returns.
>
> C. Alleged Difference between purchase in Annexure I of the petitioner and Annexure II of the seller as per web report.
>
> D. Levy of penalty under Section 27(3)(b)"

4. The petitioner's case is that he has already reconciled the differences between the purchase and sales turnover in respect of mis-match already provided the details regarding payment of consideration to prove the earlier sale. On a perusal of the impugned assessment orders, it is evidently clear that the Assessing Authority did not take into consideration the reconciliation statement.

5. Furthermore, the nature of proposal itself is that only on comparison of datas along with the books of accounts, the respondent would be in a position to decide the issue and the balance sheet would consist of various other components apart from purchases under the head "purchases", whereas in the monthly return, the purchase value alone has to be shown and therefore, there is bound to be a difference. Further, it is submitted that similarly for alleged sales difference also explanation was offered by the petitioner along with reconciliation. Therefore, when such is the situation, the respondent could have considered the reconciliation statement, after affording an opportunity of personal hearing. The other question would be as to whether the respondent could have imposed penalty under Section 27(3)(b) of the TNVAT Act.

6. The learned counsel for the petitioner submitted that the calculation of tax by the Enforcement Wing Officials obviously will not preclude the petitioner from contesting the proposal of revising the assessment. Likewise, the petitioner is also entitled to challenge the proposal to levy penalty and there can be no estoppel on the said ground.

7. In my view, the matter would have attained finality before the respondent himself had the respondent given the opportunity of personal hearing and considered the reconciliation statement filed by the petitioner, when admittedly, the respondent has received the preliminary reply dated 08.06.2016 and final reply dated 14.06.2016.

8. Furthermore, when such complicated question of facts are involved, that too, when the assessments are sought to be reopened, based on the report submitted by the Enforcement Wing Officials', it is incumbent upon the respondent to afford an opportunity of personal hearing. Therefore, this Court is of the clear view that that the impugned Assessment orders have been passed in violation of principles of natural justice. On this ground alone, the petitioner is entitled to succeed.

9. Accordingly, the Writ Petitions are allowed and the impugned orders are set-aside and the matters are remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, consider the replies dated 08.06.2016 and 14.06.2016 as well as reconciliation statement and the redo the Assessments in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s
To
The Assistant Commissioner (CT),
Tiruvallur Assessment Circle,
No.174, JN Road,
Thiruvallur - 602 001.

+8ccs to Mr.N. Murali, Advocate, S.R.No.44112
+1cc to the Government Pleader, S.R.No.44274

SCD(CO)
EU(30/08/2016)

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