IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.41127 to 41131 of 2016
& WMP.Nos.35120 to 35124 of 2016

Bee Gee Forge, rep.by its Partner ... Petitioner

Vs

The Assistant Commissioner (CT), Thiruvallur Assessment Circle. ... Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent in his proceedings leading to passing of the assessment orders respectively vide TIN/33631663101/2010-11, TIN/33631663101/2011-12, TIN/33631663101/2012-13, TIN/33631663101/2013-14 and TIN/33631663101/2014-15, all dated 4.11.2016, quash the same and direct the respondent to pass fresh revised assessment order after considering the reply filed and providing an opportunity of personal hearing.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mr.K.Venkatesh, Government Advocate

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In all these writ petitions, the petitioner challenges the assessment orders for the years 2010-11 to 2014-15 only with regard to one issue i.e liability of cross verification (invoice wise mismatch).

3. This Court is inclined to dispose of the main writ petitions themselves, since this Court is satisfied that there is a violation of the principles of natural justice.

4. Pursuant to a VAT audit done in the business premises of the petitioner, notices dated 6.11.2015 were issued to the petitioner stating that on cross verification of the purchases furnished in Annexure I statement with reference to Annexure II statement of the petitioner's sellers through computer website revealed mismatch transaction to the extent of the claim of input tax credit, in terms of the statement, which has been enclosed along with the order.

5. On receipt of the notices, the petitioner sent a comprehensive reply/ objections dated 26.2.2016 wherein they requested the respondent to provide correct and complete details in their statement for filing their objections concerning the remaining cases. They further stated that the purchases were covered by purchase bills, which full satisfy the requirements prescribed under the provisions of Rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007 and that those purchase bills contain consecutive serial numbers, the dates of invoices, names and addresses of the sellers and their tax payer identification numbers, the petitioner's name, address and their tax payer identification number, description of the goods sold, quantity and value of the goods, rate and amount of tax charged and the total value of the goods. It was further stated that they are in possession of the original purchase bills in question and undertook to produce whenever they are required by the Department.

6. Apart from that, the petitioner placed reliance on the decisions of this Court in the cases of

(i) Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle [reported in (2012) 50 VST 179];

(ii) Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani I Assessment Circle [reported in (2013) 60 VST 283]; and

(iii) Infiniti Wholesale Ltd. Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle [W.P.No.9265 of 2013 dated 6.11.2014].

Therefore, the petitioner contended that the proposal to reverse the input tax credit is illegal.

7. However, the respondent, while completing the assessments, has not referred to the entire objections given by the petitioner. Firstly, before considering the objections, the respondent should have provided the details to the petitioner,

when they specifically sought for such details. It was the further case of the petitioner that no statement was enclosed along with the show cause notices dated 6.11.2015.

8. Thus, the respondent, has selectively referred to certain portions of the petitioner's objections and has not dealt with the entire objections, did not furnish the documents sought for, did not afford an opportunity of personal hearing to the petitioner and did not deal with the applicability or otherwise of the decisions referred to by the petitioner, but proceeded on a ground that there was no document filed by the petitioner to substantiate the movement of the goods for confirmation of the purchase made from local registered dealers. Thus, it is clear that the respondent has misdirected himself in completing the assessments and the manner, in which, the assessments have been completed, is not tenable.

9. The learned counsel for the petitioner, on instructions, submits that if the details sought for are furnished to the petitioner, they will be able to produce all the documents to substantiate that the transactions done by them are genuine. In view of the glaring error, which is apparent on the face of the impugned orders, this Court is inclined to interfere with the same.

10. Accordingly, the writ petitions are partly allowed, the impugned orders are set aside in so far as the finding rendered by the respondent with regard to cross verification (invoice wise mismatch) and the matters are remanded back to the respondent for fresh consideration. The respondent shall first furnish all the details of those dealers, which information was culled out from the Departmental website. The details should contain full particulars as to the names of the dealers, invoice numbers, tax payer identification numbers, dates of transactions, commodity code, etc. On receipt of the details, the petitioner shall file their objections within a period of 15 days from the date of receipt of a copy of those details. On receipt of the objections, the respondent shall afford an opportunity of personal hearing,peruse the documents that may be produced by the petitioner and after affording full and effective opportunity to the petitioner to reconcile the matters,the respondent shall pass a speaking order on merits and in accordance with law. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Thiruvallur Assessment Circle.

+5cc's to Mr.S.Sathiyanarayanan, Advocate, S.R.Nos.68154 to 68158
+1cc to the Special Government Pleader(T), S.R.No.68285

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&
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VSN(CO)
CA(22/12/2016)