

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 08.05.2017

CORAM

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.9263 of 2017
and
WMP.Nos.10209 & 10210 of 2017

M/s. Mundhra Bullion Private Limited,
Rep. by its Director, Mr.Ashish Mundhra
No.20, Thulasingham Street,
Sowcarpet, Chennai - 600 079.Petitioner

Versus

The Assistant Commissioner (CT),
Peddunaickenpet Assessment Circle
No.48/39, Rajaji Salai,
Wavoo Mansion, 3rd Floor
Chennai - 600 001.Respondent

Prayer:

This writ petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records of the respondent dated 27.02.2017 in TIN No.33310281900/2012-13 and quash the same.

For Petitioner : Mr. Murali Kumar
For M/s.Mcgan Law Firm
For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader (Tax)

सत्यमेव जयते
O R D E R

Today, the matter is listed before this Court in a special sitting during summer vacation. Both sides agreed for taking up the matter for final disposal, though the counter affidavit is not filed.

2. The petitioner is aggrieved against the order of assessment dated 27.02.2017 passed in respect of assessment year 2012-13. The only issue involved in the order of assessment is that there is a difference between the Annexure-I filed by the petitioner and Annexure-II filed by the other end dealer.

3. The learned counsel for the petitioner submits that the case of mismatch as alleged by the Department is covered by the decision of this Court made in W.P.No.105/2016 etc. dated 01.03.2017. He further pointed out that the Assessing Officer has not given personal hearing to the petitioner, before concluding the assessment. It is also brought to the notice of this Court, that the Assessing Officer has shown only one instance of transaction as an example to conclude the assessment against the petitioner without disclosing the entire transactions, which according to the Department fall within the issue of difference between Annexure-I and Annexure-II. Therefore, he submitted that the Assessing Officer has to re-do the assessment, after hearing the petitioner in person.

4. The learned Additional Government Pleader (Tax) submitted that the other end dealer did not file the revised return within the stipulated time and there were some manipulated transactions, as pointed out by the Enforcement Wing Officials. Though he said so, the learned Additional Government Pleader is fair enough to accept that the assessment order has only dealt with one instance of transaction as an example, without dealing with all the disputed transactions and giving those particulars in the order of assessment. He has also admitted the position that the petitioner was not given personal hearing.

5. Heard both sides.

6. The petitioner is aggrieved by the order of assessment relating to the assessment year 2012-13. As already pointed out, the only issue involved in this case is the alleged difference between the Annexure-I filed by the petitioner and Annexure-II filed by the other end dealers. A perusal of the order impugned in this writ petition would show that the Assessing officer has only shown one transaction as an sample case to conclude the assessment against the petitioner. I do not think that such kind of approach can be accepted as proper and legally sustainable one. If the Assessing Officer has found that there are differences between the Annexure-I filed by the petitioner and Annexure-II filed by the other end dealers, he should give all those details in the order of assessment with discussion and findings. Showing one example alone is not sufficient to sustain the conclusion of the Assessing Officer. Moreover, in this case, personal hearing was not given to the petitioner. Apart from the above aspects, it is also to be noted that this Court has already given certain guidelines and procedures to be followed in the case of mismatch as held in W.P.No.105/2016 etc. dated 01.03.2017, wherein at paragraph Nos. 56 to 58, this Court has observed as follows:

"56. The procedure adopted under the Maharashtra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections etc. However, this Court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the department within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of proceedings with more number of cases pending before the Courts and Appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective Assessing Officers, who can decide for themselves as to whether there is a case made out to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective Assessing Officers without even the knowledge of the Assessing Officer of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

57. Hence, for all the above reasons, all the Writ Petitions are allowed and the notices/orders either original or appellate or revisional

are set aside and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharashtra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.

58. Since these Writ Petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/ dealers are not entitled to raise the plea of limitation, when fresh show cause notices are issued and they are directed to submit their explanation to enable the Assessing Officers to adjudicate their case. The Court places on record the valuable assistance of Ms.R.Charulatha Advocate of M/s. Lakshmikumaran and Sridharan Attorneys. consequently, connected miscellaneous petitions are closed. No costs."

7. Therefore, it is for the Assessing Officer to look into all those aspects and re-do the assessment, after giving due opportunity of hearing to the petitioner. Thus, this Writ Petition is allowed and the impugned order of the assessment is set aside and the matter is remitted back to the Assessing Officer to re-do the assessment, after giving due opportunity of personal hearing to the petitioner and also by following the due procedures/guidelines stipulated in W.P.No.105/2016 dated 01.03.2017. Such exercise shall be done by the respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Peddunaickenpet Assessment Circle
No.48/39, Rajaji Salai,
Wavoo Mansion, 3rd Floor, Chennai - 600 001.

+1 CC to M/s.Mcgan Law Firm, sr 36929
+1 CC to The Spl. Govt. Pleader sr 36842

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W.P.No.9263 of 2017

RJ (CO)
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