IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.05.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.9264 of 2017
and
W.M.P.Nos.10211 & 10212 of 2017

M/s.Mundhra Bullion Private Limited
Rep. by its Direcotr, Mr.Ashish Mundhra
No.20, Thulasingam 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:
Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent dated 27.02.2017 in TIN/33310281900/2015-16 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)

ORDER

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 by the order of assessment dated 27.02.2017 passed in respect of the assessment year 2015-2016.

3.Heard both sides.

4.The only issue involved in this case relates to mismatch. In other words, the contention of the Department for passing the order of assessment is that there were some differences between Annexure-I filed by the petitioner and Annexure-II filed by other end dealers. Since it is the case of mismatch, the learned counsel for the petitioner wants to rely on the decision made by this Court in W.P.No.105/2016 etc., dated 01.03.2017 for remitting the matter back to the Assessing Officer to re-do the assessment in accordance with the guidelines / procedures prescribed by this Court in the above said decision. He further pointed out that the Assessing Officer erroneously found as if the petitioner-company has not filed their objections to the notice, when in fact such objections were filed on 17.02.2017, which is also referred to in the impugned order at the reference column. Therefore, he submitted that the Assessing Officer has not applied his mind to the said objections raised by the petitioner.

5. On the other hand, the learned Additional Government Pleader (Tax) for the respondent submitted that when the notice was sent, the petitioner did not file their objections and therefore the Assessing Officer has passed the order of assessment. However, he fairly contended that the issue involved in this case viz., mismatch is covered by the above said decision of this Court in W.P.No.105/2016 etc., dated 01.03.2017, wherein Para No. 56 to 58, it has been observed as follows :-

> "56.The procedure adopted under the Maharastra 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 Maharastra, 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."

6.Upon hearing the learned counsel on either side and on a perusal of the order of assessment, it is evident that the Assessing Officer, though referred to the letter dated 17.02.2017 received from the dealer in the reference column, has not dealt with the same while passing the order of assessment. In other words, he has erroneously found as if the petitioner has not filed any objections to the notice. The said letter dated 17.02.2017 is enclosed in the typed set of papers, which according to the petitioner, is the objections raised to the notice.

7.Considering the above said facts and circumstances and considering the admitted position that the issue involved in this case is covered by the above said decision of this Court in W.P.No.105/2016 etc., dated 01.03.2017 and also considering the fact that the letter dated 17.02.2017 given by the petitioner is not taken into consideration by the Assessing Officer, I am of the view that the matter has to be remitted back to the Assessing Officer for re-doing the assessment, after considering the objections filed by the petitioner and also giving them an opportunity of personal hearing.

8. Accordingly, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment, after hearing the petitioner and considering their objections and by following guidelines / procedures issued by this Court in W.P.No.105/2016 etc., dated 01.03.2017. Such exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

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 36930
+1 CC to Spl. Govt. Pleader sr 36842

Writ Petition No.9264 of 2017

RJ(CO)
sp/22/5