IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 08.05.2017

CORAM

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.9265 of 2017
and
WMP Nos.10213 & 10214 of 2017

M/s. Mundhra Bullion Private Limited,
Rep. by its Director, 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:
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. 33310281900/2013-14 and quash the same so far it relates to the tax liability determined due to the difference between Annexure-I filed and Annexure-II of the other end dealer and the difference in the import purchases arrived by the respondent as per the departmental website.

For Petitioner : Mr. Murali Kumar
For M/s.Mcgan Law Firm

For Respondents: Mr.S.Kanmani Annamalai,
Additional Government Pleader (Tax)

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 counter affidavit is not filed.

2. The petitioner is aggrieved by the order of assessment dated 27.02.2017 passed in respect of assessment year 2013-14 . There are three issues involved in this case, which are as follows:-

(1) Difference between Annexure-I filed and Annexure-II of the other end dealer.
(2) Purchase Suppression
(3) Difference in the Import purchases.

3. It is admitted by both sides that out of these three issues, two issues viz., Issue No.1 and 3 are covered by the order of this Court made in W.P.No.105 of 2016 dated 01.03.2017, since the same relates to mismatch and therefore the Assessing Officer has to follow the procedures/guidelines issued in the above said order passed by this Court. Insofar as the second issue, viz, purchase suppression is concerned, the learned counsel for the petitioner submitted that the petitioner is not pressing the writ petition and consequently, they would pay the amount of tax involved in respect of such issue.

4. The learned Additional Government Pleader (Tax) is not disputing that the Issues Nos. 1 and 3 viz., the difference between the Annexure-I filed by the petitioner and Annexure-II filed by the other end dealers and difference in the import purchases are covered by the above said decision of this Court made in W.P.No.105 of 2016 dated 01.03.2017. He further submitted that since both issues arise out of the Web report collected by the Department from the Department's website, the Assessing Officer has to re-do the assessment by following the guidelines/procedures issued by this Court in the above said decision.

5. The above said issues are covered by the decision of this Court made in W.P.No.105 of 2016 dated 01.03.2017 at paragraph Nos. 56 to 58, it is stated 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. Considering the submissions made by the learned counsel on either side and the facts and circumstances of the case, and in view of the admitted position that the two issues viz., the difference between the Annexure-I filed by the petitioner and Annexure-II filed by the other end dealers and difference in the import purchases is covered by the above said decision and considering the submission made by the petitioner that they are not aggrieved by the assessment order insofar as the tax imposed on the issue of purchases suppression, is concerned, this Court is of the view that the impugned order of assessment is liable to be set aside only insofar as the two issues, namely issue No.1 and 3 are concerned.

7. Accordingly, this writ petition is allowed in part and the impugned order of assessment is set aside only insofar as the issue Nos.1 and 3 are concerned, and the Assessing Officer is directed to re-do the assessment insofar as those two issues are concerned, after giving personal hearing to the petitioner and also by following the guidelines /procedures laid down by

this Court in the said Writ Petition. 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. Insofar as the issue No.2, relating to the purchase suppression is concerned, the assessment order stands and the petitioner is bound by such assessment and liable to pay the tax due under such issue. 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 36931
+1 CC to Govt. Pleader sr 36842

W.P.No.9265 of 2017

RJ(CO)
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