IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM:
THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.7604 of 2017
and
W.M.P.No.8297 of 2017

M/s.S.G.S.Enterprises,
rep. by its Proprietor Mr.G.Yuvaraj
No.1, Perumal Koil Street,
Old Pallavaram,
Chennai - 600 117 ...Petitioner

Versus

1. The Assistant Commissioner (CT),
Chrompet Assessment Circle,
No.117 Station Road,Radha Nagar,
Chrompet,
Chennai - 600 044.

2. The State of Tamil Nadu,
rep. By its Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai - 600 009. ..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in TIN 33440944193/2013-14 dated 13.04.2015 and quash the same and further direct the respondents to restore the Input Tax Credit reversed at the hands of purchaser from the petitioner, since the State cannot enrich itself with reversal of Input Tax Credit at the purchaser from the petitioner on one hand and also recover the tax on the sales made by the petitioner to them.

For Petitioner : Mr.V.Sundareswaran

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

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved against the order of assessment dated 13.04.2015.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4. The petitioner seeks to challenge the impugned order of assessment, mainly by contending that the assessment made based on the Web Report without furnishing those details to the petitioner, cannot be sustained. Apart from raising such ground, the petitioner also questioned the imposition of penalty by contending that the Assessing Officer is not justified in confirming the proposal for penalty without there being any specific finding of suppression warranting such imposition. In support of the first contention, learned counsel for the petitioner seeks to rely on the decision of this Court made in a batch of cases in W.P.No.105 of 2016 etc. dated 01.03.2017 wherein the learned Judge has pointed out that while dealing with the assessments based on Web Report, the authorities should adopt centralised mechanism and conduct enquiries at all levels. In the above said decision at paragraphs Nos.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.

5. Therefore, I am of the view that the Assessing Officer, in the present case, has to follow the above directions/ guidelines issued by this Court for finalising the assessment if the assessment was based solely on the Web Report.

6. In so far as the next contention raised by the learned counsel for the petitioner on the imposition of penalty is concerned, as rightly pointed out by him, a perusal of the assessment order does not indicate any reasoning by the Assessing Officer for imposing such penalty. Therefore, on that aspect also, the Assessing Officer has to reconsider the issue once again. Consequently, the writ petition is allowed and the impugned order is set aside and the matter is remitted back to the Assessing Authority to redo the assessment in the light of the order passed by this Court in W.P.No.105/2016 etc. dated 01.03.2017. The petitioner should also be given an opportunity of personal hearing before finalising the assessment order. The entire exercise shall be completed by the respondent within a period of eight weeks from the date of receipt of a copy of this order. It is also stated that the petitioner has paid the tax for the purpose of getting the copy of the order of assessment as it is contended that the original order served on the petitioner was misplaced. Since the petitioner has questioned the imposition of tax and as it appears that the petitioner has paid the tax under protest, the petitioner is not entitled to seek for refund of the same till a fresh order of assessment, as directed by this Court, is passed by the Assessing Authority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vsi

To

1. The Assistant Commissioner (CT),
   Chrompet Assessment Circle,
   No.117 Station Road,Radha Nagar,
   Chrompet,
   Chennai - 600 044.

2. The Secretary,
   Commercial Taxes and Registration Department,
   Fort St.George,
   Chennai - 600 009.

+1cc to Mr.V.Sundareswaran,Advocate sr.19391

+1cc to Special Government Pleader(taxes) sr.19456

W.P.No.7604 of 2017

ak(co)
ss(10/4/2017)