IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.13511 of 2017
in
W.M.P.No.14590 of 2017

Tvl. Andavar Marketing Pvt. Ltd.,
Represented by its Director,
P.Rajmohan,
No.155/135, Kamarajar Road,
Periamathur, Manali,
Chennai - 600 068. ...Petitioner

/versus/

The Assistant Commissioner (CT),
Royapuram Assessment Circle,
No.20, Kummalamman Koil Street,
Chennai - 600 081. ...Respondent

Prayer: Writ petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN.33871182625/2013-14 dated 31.03.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.S.Kanmani Annamalai,
Special Government Pleader (Tax)

ORDER

Challenging the proceedings of the respondent in TIN.33871182625/2013-14 dated 31.03.2017, the present writ petition has been filed by the petitioner.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Tax) appearing for the respondent.

3.There are three issues involved in this writ petition. One is with respect to reversal of ITC due to receipt of discount on purchases; the second one is with respect to incorrect and ineligible availment of ITC noticed on account of cross verification and the third one is with respect to reversal of ITC on account of purchases effected from RC cancelled dealers.

4.In so far as Issue Nos.2 & 3 are concerned, the learned counsel for the petitioner has relied on a judgement of this Court in Althaf Shoes (P) Ltd., v Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai - 6 (2012 (50) VST 179 (Mad)) which has become final and the learned counsel has also relied on the order passed by this Court, in W.P.No.6816 of 2017 dated 21.03.2017 wherein, it has been held as follows:-

> "5.This Court while considering the assessments made based on web report, has passed a detailed order in W.P.No.105 of 2016 etc. batch, dated 01.03.2017, wherein at paragraph 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."

6.Therefore, it is clear that the respondent has to redo the assessment after following the procedure/ guidelines made in the above said batch of cases.

7.Accordingly, the writ petition is allowed and the impugned order of assessment is set aside and the matter is remitted back to the respondent for passing fresh order of assessment after following the procedure/ guidelines issued in the above said batch of cases, also by affording opportunity of personal hearing to the petitioner. 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.

8.The writ petition is allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is closed."

5.The above said factum is not disputed by the learned Special Government Pleader (Tax) appearing for the respondent.

6.In such view of the matter, the impugned order in TIN.33871182625/2013-14 dated 31.03.2017 in respect of issue Nos.2 & 3 viz., incorrect and ineligible availment of ITC noticed on account of cross verification and to reversal of ITC on account of purchases effected from RC cancelled dealers respectively alone are set aside. In so far as the first issue viz., reversal of ITC due to receipt of discount on purchases is concerned, the petitioner is at liberty to exhaust the statutory remedy.

7.The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant registrar(CS II)

TRUE COPY//

sub assistant registrar

jbm

To

The Assistant Commissioner (CT),
Royapuram Assessment Circle,
No.20, Kummalamman Koil Street,
Chennai - 600 081.

+1cc to Mr.R.Senniappan, Advocate in Sr.No.38173
+1cc to Special Government Pleader(Taxes) in Sr.No.38117

W.P.No.13511 of 2017 and
W.M.P.No.14590 of 2017

KS(CO)
NR(01/06/2017)