IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01-02-2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2341 of 2017

and W.M.P.No.2328 of 2017

M/s. Faab Impex
Rep. by its Proprietor
No.115, Bye Pass Road
Ambur - 635 802 .. Petitioner

Vs.

Deputy Commercial Tax Officer
Ambur Assessment Circle
Ambur, Vellore District .. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the respondent and quash the assessment proceedings in TIN 33954264368/2014-15 dated 30-09-2016 and direct the respondent to pass fresh orders by providing an opportunity of personal hearing and pass orders.

For Petitioner : Mr. C. Baktha Siromoni

For Respondent : Mr. K. Venkatesh, Govt. Advocate

ORDER

1. Issue notice. Mr. K. Venkatesh, learned counsel appearing for the respondents accepts notice on behalf of the respondents. With consent of the learned counsel for the parties, the writ petition is taken up for final hearing and disposal.

2. By virtue of this writ petition, challenge is laid to the order dated 30-09-2016. The petitioner has assailed the order on two grounds. First that the order has been passed by the Officer, who did not have the necessary pecuniary jurisdiction to deal with the matter. Second, that the impugned order proceeds on the basis that the Input Tax Credit ('ITC' in short) had been claimed on certain purchases which were not

reported by end dealers/vendors. In other words, taxes properly paid by the petitioner on purchases made, had not been realized by the Revenue at the Vendors end.

2.1 On behalf of the petitioner, it is contended that the respondent/Assessing Officer should have supplied the material particulars with regard to this facet of the matter, and that, a mere mismatch in the information supplied by the petitioner, as against that which obtained with the Department could not have formed the basis for coming to the conclusion that ITC had been wrongly claimed. The petitioner says that the approach adopted by the respondent/Assessing Officer was contrary to the judgments of this Court rendered in,

(i) Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai (2012 (50) VST 179 (Mad)),

(ii) Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani # I Assessment Circle, Chennai and Another [2013 (60) VST 283 (Mad)]

(iii) Infiniti Wholesale Limited Vs Assistant Commissioner (CT), Koyambedu Assessment Circle, Koyambedu, Chennai [2015 (82) VST 457 (Mad)].

2.2 Furthermore, insofar as the first ground of challenge is concerned, the learned counsel for the petitioner relies upon G.O.No.113 dated 05-09-2011.

3. Mr. Venkatesh, learned Government Advocate, who appears for the respondent/ Assessing Officer says that the petitioner was served with pre-assessment notice on 30-05-2016, to which no reply was filed. It is therefore, the learned Government Advocate's submission that at this stage, the impugned order could not be set aside only because the Assessing Officer lacked pecuniary jurisdiction.

3.1 Insofar as the second aspect is concerned, the learned counsel says that, he cannot, but submit that the respondent/ Assessing Officer was required to pass the assessment order keeping in mind the ratio of the judgments cited above.

4. I have heard the learned counsel for the parties and perused the record. As regards the first ground of challenge raised by the petitioner, I am not inclined to accept the same, for the reason that it involves an aspect pertaining to the pecuniary jurisdiction of the Assessing Officer, qua which, admittedly, no objection was taken in the first instance.

4.1 To my mind, there is a vast difference between subject matter jurisdiction and pecuniary jurisdiction. Had the petitioner/assessee taken an objection vis-a-vis the pecuniary jurisdiction in terms of G.O.No.113 dated 30-05-2016, perhaps, there would have been something to be said in that behalf. Having remained silent the impugned order cannot be assailed on this ground alone. The submission made in this behalf is accordingly, rejected.

5. However, insofar as the second aspect of the matter is concerned, I am inclined to agree with the petitioner that the respondent/Assessing Officer was required to supply requisite materials, based on which conclusion was drawn that ITC in the petitioner's case had to be reversed.

6. A perusal of the tabular chart incorporated in the impugned order shows that there are gaps in the particulars gathered qua the end dealers/vendors. Therefore, I am inclined to set aside the impugned orders, on this ground. Liberty is, however, given to the respondent/ Assessing Officer to redo the assessment after supplying requisite information to the petitioner/ assessee. The respondent/ Assessing Officer will afford an opportunity of personal hearing to the petitioner/ assessee before passing a fresh assessment order. Needless to say the respondent/ Assessing Officer will pass a speaking order.

7. The writ petition is disposed of, accordingly. The connected miscellaneous petition is also closed. No costs.

sd/
Assistant Registrar(CS VI)

/true copy/

Sub Assistant Registrar

glp

To

1. The Deputy Commercial Tax Officer
Ambur Assessment Circle
Ambur, Vellore District

+1CC to Mr.C.Baktha siromoni, Advocate SR.No.6168/17
+1cc to Special Goverrnment Pleader SR.No.6368/2017

W.P.No.2341 of 2017

AK(CO)
GN(21/02/2017)