IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.27758 & 27759 of 2017
and
W.M.P. Nos.29742 to 29745 of 2017

M/s Jayashree Agencies,
rep.by its proprietor - M. Gopinath ...Petitioner

.Vs.

The Assistant Commissioner (CT) (FAC),
Vellore(North) Circle, Vellore,
Vellore District. ...Respondent

Prayer: The writ petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN 33444202908/2014-15 and TIN 33444202908/2015-16 dated 15.09.2017 and quash the same as illegal and contrary to the scheme of the Act and pass orders.

For Petitioner : Mrs. R.Hemalatha

For Respondent : Mrs. Narmada Sampath, SGP

C O M M O N O R D E R

Heard Mrs. R. Hemalatha learned counsel for the petitioner and Mrs.Narmada Sampath, learned Special Government Pleader accepting notice for the respondent. By consent on either side, the writ petitions are taken up for final disposal.

2. The petitioner is a dealer in electronic goods, registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The assessment for the years 2014-2015 and 2015-2016 were deemed to have been completed in terms of Section 22(2) of the said Act. Pursuant to the inspection conducted by the Enforcement Wing Officials in the business premises of the petitioner on 10.06.2016, 11.06.2016 and 13.06.2016, the respondent issued notices proposing to revise the assessments.

3.The respondent, in the notices, pointed out three major defects namely :

(i) that the purchases and sales registered under Rules 6 (2)(b) and 6(2)(c) of the Tamil Nadu Value Added Tax Rules, 2007, have not been maintained.

(ii) that the input tax credit claim and adjustment assessment has not been maintained as required under Rule 6(9) of the said Rules and

(iii) that on verification of the audited balance sheet filed before the Income Tax Department, it is seen that the petitioner received discounts on purchases, but the relevant credit notes available with dealers received from the suppliers revealed that the discounts have been given towards purchases.

4. Therefore, the respondent proposed that the petitioner ought to have made reversal of input tax credit for the said discounts and having failed to do so, they are liable to tax at the rate of 14.5% and the input tax credit is liable to reversed under Section 19(20) of the said Act. The petitioner was given an opportunity to submit their objections.

5. The petitioner, in their objections, which have been received by the respondent on 10.08.2017 mainly contended that for the discount on sales incentive issued after issuing tax invoice, the selling dealer shall pass a credit note without disturbing the tax component on the prices in the original tax invoice so as to return the quantum of the input tax credit already claimed. Therefore, the petitioner contented there cannot be any reversal under Section 19(20) of the said Act.

6. The respondent, after considering the objections, completed the assessments and passed the impugned orders stating that the petitioner did not file any documentary proof to show that they received discount after issuing tax invoice without disturbing the tax component.

7. Thus, in the absence of any documentary proof, the respondent held that the reply given by the petitioner is not acceptable. Unfortunately, the respondent did not give further opportunity to the petitioner to produce documents, which could have very well been done, as an assessment proceedings is an outcome of dialogue and discussion. Though the petitioner did not specifically seek for a opportunity of personal hearing, when such factual issues are involved, the Assessing officer is required to give an opportunity of personal hearing to the dealer. If that had not been done, there is every possibility that the impugned assessment orders may not have been passed.

However, it is too early for this Court to express any opinion on this issue.

8. The learned counsel for the petitioner has referred to the circular issued by the Commissioner of Commercial Taxes dated 04.11.2013, which was issued after Section 19(20) of the said Act was inserted in the Statute. The relevant portion of the circular reads as follows:

> "Provisions of section 19(20) will extend only to reversal of excess ITC. In order to tackle evasion of taxes, if there is a case of selling at a price abnormally below prevailing market price, the provisions of section 24 of the act have to be involved by the assessing authorities taking into account concrete evidence available to such effect. Invoking of section 19(2) is not sufficient."

9. The learned counsel for the petitioner has submitted that the respondent failed to adhere to the directions issued in the circular.

10. However, this Court is not inclined to accept the said submission, as there is a duty cast upon the dealer to produce necessary documents and evidence to substantiate their stand. Even the circular states that the Assessing Officer should take into account the concrete evidence available. It is dealer's responsibility to make available the concrete evidence, which the petitioner failed to do.

11. But, considering the submission of the petitioner that they have not received discounts after issuance of tax invoice without disturbing the tax component, this Court is inclined to grant one more opportunity to the petitioner to submit such documents. However, for that reason, this Court is not inclined to set aside the impugned order, but would give liberty to the petitioner to treat the impugned assessment orders as show cause notices and submit further objections along with documents and evidence.

12. In the result, the writ petitions are disposed of, directing the petitioner to treat the impugned assessment orders as show cause notices and submit their further objections within a period of 15 days from the date of receipt of a copy of this order. Along with the objections, the petitioner shall enclose copies of evidence to prove that they received discount after issuing the tax invoice without disturbing the tax component. On receipt of the further objections with the documents, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in

accordance with law. No costs. Consequently, the above WMPs are closed.

-sd/-
Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

smn

To

The Assistant Commissioner (CT) (FAC)
Vellore(North) Circle,
Vellore, Vellore District.

2 cc to MR.R.HEMALATHA Advocate SR.NO. 7728
1 cc to SPECIAL GOVERNMENT PLEADER [TAXES]SR NO.77280

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RD 20/11/2017