IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.Nos.43028 and 43030 of 2016

and WMP No.36879 of 2017

M/s.J.Y.International
represented by its Manager,
Uday N.Nagda,
Door No.61/C, Ethiraj Swamy Salai,
Erukkancheery,
Chennai-600 118. .. Petitioner in both W.Ps

vs.

The Assistant Commissioner (CT),
Kodungaiyur Assessment Circle,
5/79, II Floor, V Cross Street,
Kaviarasu Kannadasan Nagar,
Kodungaiyur,
Chennai - 600 118. .. Respondent in both W.Ps

Prayer in W.P.No.43028 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, or any other appropriate writ, order of direction calling for the records on the files of the respondent herein in TIN : 33351088433/2012-13, dated 02.05.2016 as rectified by order in TIN : 33351088433/2012-13, dated 21.10.2016, quashing the same, or pass further or other orders as may be deemed fit and proper in the circumstances of the case.

Prayer in W.P.No.43030 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, or any other appropriate writ, order of direction calling for the records on the files of the respondent herein in TIN : 33351088433/2012-13, dated 21.10.2016, quashing the same only in so far as it declines relief to the extent of Rs.1,43,48,040/- and penalty of Rs.71,74,020/-, while directing the respondent herein to re-dispose the application dated 20.06.2016, or pass further or other orders as may be deemed fit and proper in the circumstances of the case.

For Petitioner in: Mr.N.Prasad
both W.Ps.

For Respondent in : Mr.S.Kanmani Annamalai,
both W.Ps Additional Government Pleader

COMMON ORDER

1. These are two writ petitions, which pertain to Assessment Year (AY) 2012-13.

2. In the first writ petition, i.e., W.P.No.43028 of 2016, challenge is laid to the assessment order dated 02.05.2016.

2.1. In so far as W.P.No.43030 of 2016 is concerned, challenge is laid to the order dated 21.10.2016, passed in a petition, filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short the 2006 Act).

3. The record shows that vide assessment order dated 02.05.2016, the petitioner has been mulcted with the tax liability of Rs.3,03,32,710/- along with penalty in the sum of Rs.1,51,66,355/-

3.1. Upon the order dated 21.10.2016, having been filed in the rectification petition preferred by the petitioner, the demand qua tax was reduced to Rs.1,43,48,040/- and similarly, liability towards penalty was reduced to Rs.71,74,020/-.

4. To be noted, the petitioner was, admittedly, served with two pre-assessment notices dated 07.01.2015 and 15.12.2015.

4.1. Pertinently, the pre-assessment notices pertain to, not only AY 2012-13, but also with respect to the AY 2013-14, with respect to which, two other writ petitions were filed, which are also on my Board today.

4.2. These two writ petitions are: W.P.Nos.43029 and 43031 of 2016. I intend to deal with the said writ petitions separately.

4.3. Suffice it to say that in so far as AY 2012-13 is concerned, the respondent put the petitioner to notice via the aforementioned pre-assessment notices that he proposes to reverse the Input Tax Credit (in short ITC), on the ground of non-disclosure of sales by one of its vendors, i.e., Arunachala Impex Private Limited, qua the months of December 2012 and January 2013.

4.4. It is not disputed before me, by the learned counsel for the petitioner, that none of the notices were replied to by the petitioner.

5. Mr.Prasad, who appears on behalf of the petitioner, however, says that notwithstanding the fact that the notices were not replied to, since, the imposition of tax and penalty qua AY 2012-13 is pivoted on mismatch in information, the relevant particulars and information ought to have been furnished to the petitioner.

5.1. It is the contention of the learned counsel for the petitioner that notwithstanding the fact that objections were not filed, was not a good, enough reason for the respondent to mulct the petitioner with tax liability, unless he came to the conclusion that the entire transaction was bogus or fraudulent.

5.2. In support of his submissions, learned counsel for the petitioner, relied upon the following judgements :

> i) Sri Vinayaga Agencies V. Assistant Commissioner (CT), Vadapalani - I Assessment Circle, Chennai and another, [2013] 60 VST 283 (Mad);
>
> ii) The Assistant Commissioner (CT) V. M/s.Althaf Shoes (P) Limited, passed in W.A.Nos.1367 and 1368 of 2016, dated 10.11.2016; and
>
> iii) Infiniti Wholesale Limited (formerly known as Woolworths Wholesale (India) Private Limited) V. Assistant Commissioner (CT), [2015] 82 VST 457.

6. Mr.S.Kanmani Annamalai, on the other hand, says that opportunities were given, which were not availed of by the petitioner. According to the learned counsel, the respondent adopted the correct approach with regard to the impugned orders, and therefore, they need not be interfered with.

7. I have heard the learned counsel for the parties and perused the record.

8. According to me, while, clearly, the counsel for the respondent is right in his contention that the petitioner ought to have filed its objections in time, it was not open to the respondent to conclude the assessment, without furnishing the requisite information, material and/or details to the petitioner.

8.1. Admittedly, the relevant information and details were not supplied to the petitioner. Therefore, based on a mere mismatch in information (which was available on the website of the Department, as against that, which was found contained in the monthly returns of the petitioner), to my mind, tax liability and penalty could not have been imposed on the petitioner.

8.2. As a matter of fact, I had an occasion to deal with a similar issue in the matter of: International Flavours and Fragrances Private India Private Limited V. The Assistant Commissioner (CT). The said action is registered as W.P.No.1009 of 2007 and, was disposed of by me, vide order dated 12.01.2017. For the sake of convenience, the relevant observations contained therein are extracted below:

> ".... 4. Therefore, the short ground, on which, the petitioner challenges the impugned order, is that, the mere failure on the part of the selling dealers in reporting corresponding sales, (assuming that the state of affairs is true), cannot be the basis of reversing the ITC claimed by the petitioner.
>
> 4.1. In support of this contention, learned counsel for the petitioner relies upon the following judgments:
>
> i) Sri Vinayaga Agencies V. Assistant Commissioner (CT), Vadapalani - I Assessment Circle, Chennai and another - [2013] 60 VST 283 (Mad)
>
> ii) The Assistant Commissioner (CT) V. M/s.Althaf Shoes (P) Limited, passed in W.A.Nos.1367 and 1368 of 2016, dated 10.11.2016. and
>
> iii) Infiniti Wholesale Limited (formerly known as Woolworths Wholesale (India) Private Limited) V. Assistant Commissioner (CT) - [2015] 82 VST 457
>
> 4.2. Furthermore, counsel for the petitioner informs me that the judgment of the learned single Judge in Infiniti Wholesale Limited (formerly known as Woolworths Wholesale (India) Private Limited) V. Assistant Commissioner (CT) - [2015] 82 VST 457 has been sustained by the Division Bench in W.A.No.775 of 2016, dated 09.09.2016.
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> 5. Mr.S.Kanmani Annamalai, therefore, says that if a direction is issued by this Court for passing an order afresh, the same will be complied with.
>
> 6. Having regard to the contentions raised by the petitioner and having perused the impugned order,

according to me, the respondent appears to have misdirected himself in law.

7. The respondent, to my mind, cannot reverse the ITC of a dealer, merely because, the selling dealer does not report the same. If, the Revenue find any discrepancy, it will have to be put to the petitioner and, only if, the purchasing dealer is unable to satisfy the Revenue, as regards the genuineness of the transaction, can any adverse orders be passed against the concerned dealer. ..... "

9. Having regard to the foregoing facts and circumstances as also the judgements of this Court, which were relied upon by Mr.Prasad, I am inclined to set aside the impugned order dated 02.05.2016, and, as modified by order dated 21.10.2016, with liberty to the respondent to redo the assessment.

9.1. The needful will be done by the respondent at the earliest, though, not later than ten (10) weeks from the date of receipt of a copy of the order.

10. The captioned writ petitions are disposed of, in the aforesaid terms. Resultantly, the pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (CT),
Kodungaiyur Assessment Circle,
5/79, II Floor, V Cross Street,
Kaviarasu Kannadasan Nagar,
Kodungaiyur,
Chennai - 600 118.

+1CC to the Special Government Pleader Sr.11479
+1cc to Mr.N.Inbarajan, Advocate Sr.11378

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ca[co]
srg 24/03/2017