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.43029 and 43031 of 2016
and WMP No.36880 of 2016

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.43029 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 : 33351088433/2013-14, dated 02.05.2016 as rectified by order in TIN : 33351088433/2013-14, 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.43031 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 : 33351088433/2013-14, dated 21.10.2016, quashing the same only in so far as it declines relief to the extent of Rs.6,09,000/- and penalty of Rs.3,04,500/-, 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) 2013-14.

2. The first writ petition, i.e., W.P.No.43029 of 2016 assails the assessment order dated 02.05.2016, while the second writ petition, i.e., W.P.No.43031 of 2016, impugns the order dated 21.10.2016, passed in a petition, preferred under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short the 2006 Act).

3. The record shows that the assessment order was preceded by two pre-assessment notices dated 07.01.2015 and 15.12.2015. Admittedly, none of these notices were replied to by the petitioner. The record also shows that in so far as the petitioner was concerned, qua the AY, the following two proposals were made in the pre-assessment notices :

(i). Mismatch : Reversal of ITC on the ground of non-disclosure of sales by the vendor, namely, M/s.Arunachala Impex P. Ltd. for the month of April 2013.

(ii). Double claim Input Tax Credit (ITC).

3.1. Since, no objections were filed, the respondent, passed the impugned assessment order dated 02.05.2016 and went on to impose tax, in the sum of Rs.9,13,500/- and, penalty amounting to Rs.4,56,750/-.

3.2. Consequent to the assessment order being passed, the petitioner, it appears, preferred a petition under Section 84 of the 2006 Act, which resulted in the cancellation of demand qua the alleged double claim of ITC. Accordingly, tax in the sum of Rs.3,04,500/- and penalty amounting to Rs.1,52,250/- got reduced from the total liability imposed on the petitioner.

3.3. However, the petitioner's grievance regarding the imposition of tax on the alleged ground of mismatch in information, (i..e, that which was available on the Department's website, as against what was found contained in the monthly returns) was not addressed.

3.4. Clearly, the reason this issue was not dealt with is, because the respondent came to the conclusion that under Section 84 of the 2006 Act, such an error could not be corrected, as it was not an error apparent on the face of the record.

4. Mr.Prasad, who appears on behalf of the petitioner, submits that the respondent could not have levied tax merely because there was mismatch in information, even though, no objections were filed, as relevant information and material was not supplied to the petitioner.

4.1. It was submitted that the transactions were genuine, and therefore, only because the seller had not disclosed the transaction, it could not be taken as a ground for imposing tax on the petitioner.

4.2. In support of his submission, Mr.Prasad, 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.

5. Mr.S.Kanmani Annamalai, on the other hand, says that the order need not be interfered with, for the reason that the petitioner had chosen not to file its objections to the pre-assessment notices issued by the respondent.

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

7. In my view, 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, could not form the basis of imposing a tax liability and penalty on the petitioner. The respondent was required to supply all material particulars to the petitioner, which, in this case were admittedly, not supplied.

7.1. The inference drawn in the assessment order dated 02.05.2016, is that, the transaction was not genuine. This aspect of the matter was never put to the petitioner.

7.2. Therefore, according to me, the impugned orders, to the extent it imposes a tax liability on the petitioner, on the ground of mismatch in information, needs to be set aside. Accordingly, it is ordered. Consequently, the penalty will also fall by the wayside.

7.3. Both, the assessment and penalty order, as impugned, are set aside.

7.4. The respondent, however, is given liberty to redo the assessment.

7.5. Needless to say the aforesaid exercise will be carried out with due expedition, though, not later than ten (10) weeks from the date of receipt of a copy of the order.

8. 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

To

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

W.P.Nos.43029 and 43031 of 2016
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srg 24/3/2017