BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.14163 and 14164 of 2017
and
W.M.P.(MD)Nos.11077 and 11078 of 2017

Lakshmi Marbles,
Represented by its Partner,
V.Karthikeyasamy, aged about 51 years,
S/o Vellaisamy Thevar,
No.11, Padma Complex, 100 Feet Road,
Karaikudi,Sivagangai District - 630 001.... Petitioner in both W.P.s

-vs-

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes, Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Taxes Officer,
50/52, Jawahar Street, Karaikudi,
Sivagangai District - 630 001. ... Respondents in both W.Ps.

Prayer in both W.P.s: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in TIN Nos:33875483702/2014-15 and 33875483702/2015-16 dated 02.06.2017 and quash the same.

For Petitioner : Mr.S.R.Veeramanikandan

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

COMMON ORDER

By consent of both sides, these writ petitions themselves are taken up for final disposal.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3.The petitioner has questioned the correctness of the Impugned Assessment Order, dated 02.06.2017, taking a predominant stand that pre-Assessment Notice proposing to revise the assessment by levying tax on the alleged suppression and to reverse the input tax credit claimed is liable to be re-looked by the respondents. The reason is that when the petitioner submitted a detailed reply to the pre-Assessment Notice proposing to revise the assessment by levying tax on the alleged suppression and sought copies of the documents relied upon by the respondents in the assessment on 08.12.2016, the petitioner has specifically requested the copies of the documents to be furnished to the petitioner, as they were all relied upon by the respondents in the pre-Assessment Notice. Admittedly, till date, the respondents have not come forward to furnish any one of the documents, which shows that the petitioner was not able to give suitable reply to the pre-Assessment Notice proposing to revise the assessment. Therefore, the Impugned Assessment Order dated 02.06.2017, passed against the petitioner merely confirming the proposals of the Enforcement Wing officials, without providing the documents as requested by the petitioner, is liable to be set aside.

4. It is also further contended that the respondents, without even verifying the books of accounts of the petitioner, have wrongly passed the impugned order violating the principles of natural justice. Therefore, the impugned order is, *per se*, unlawful and hence, the same is liable to be set aside.

5.A counter affidavit has been filed by the respondents. The learned Additional Government Pleader appearing for the respondents submitted that while pre-Assessment Notice was issued levying tax on the alleged suppression to the further proposal to revise the input tax credit claimed by the petitioner, in the pre-Assessment Notice itself all the documents were cited. Moreover, the petitioner's business place was inspected by the Inspecting Authority. During the course of inspection, they have indeed collected all the purchase omissions made by the petitioner during the year 2014-15 and the same was pointed out by the Inspecting Authority. Immediately, the petitioner also agreed to the Inspecting Authority stating that the same would be reconciled and the tax also would be paid, if necessitated. But the Inspecting Authority has indicated the sale suppression made by the petitioner and wrong availment of input tax credit for a sum of Rs.571/- and Rs.375/- for the years 2014-15 and 2015-16 and they have found omissions to the tune of Rs.1,81,260 for the assessment year 2015-16 and it is stated that the petitioner was well aware of the purchase omissions.

6. Thereafter, they have submitted their reply dated 08.12.2016 and objection dated 13.02.2017 seeking certain documents to be furnished to them on the ground that the respondents have relied upon them in the pre-Assessment Notice.

They have further submitted that furnishing of the aforesaid documents is only an empty formality. The respondents also in the impugned assessment order has discussed all the details about the omission made by the petitioner.

7. His further contention is that the petitioner, even without receiving the aforesaid documents, could have submitted a detailed reply objection, if any, as they have not come forward to file their detailed objection asking for documents to submit their reply is only a time taking technique.

8. Adding further, the learned Additional Government pleader would submit that the petitioner was already afforded an opportunity of personal hearing to the petitioner before passing the impugned order. Therefore, question of alleging violation of principles of natural justice is not available to the petitioner.

9. This Court is unable to find any merit in the objection raised by the petitioner. The reason is that when the pre-Assessment Notice proposing to revise the assessment by levying tax on the alleged suppression to reverse the input tax credit claimed was issued, the petitioner submitted a reply letter on 08.02.2016 and objection on 13.02.2017. No doubt, the reply and objection letters are supported with documentary evidence. But, however, the petitioner also being a Registered Dealer has requested the respondents to furnish some of the crucial documents relied upon by the respondents in the pre-Assessment Notice to submit a detailed reply.

10. But, till date, the respondents have not come forward to furnish any of the documents in the aforementioned reply. It is admitted by the respondents that 22 objections were given by the petitioner to the assessment period. Atleast, after noting that the petitioner has raised 22 objections, in all fairness, could have furnished some of the documents relied upon by the respondents in the pre-Assessment Notice. While doing so, the respondents could have also given the reasons for not furnishing any documents. But, no such reason is found for not furnishing the documents. The petitioner has also sought for a copy of proposal of the Enforcement Wing Authority. Admittedly, the Assessing Authority has not furnished the same. Therefore, the impugned order of assessment passed by the respondents is liable to be set aside and accordingly, the same is set aside.

11.The respondents are hereby directed to furnish a copy of the proposal of the Enforcement Wing officials dated Nil and other documents relied upon in the pre-Assessment Notice within a period of two weeks from the date of receipt of a copy of this order and after furnishing the same, the petitioner is further directed to furnish the objections within a period of three weeks, thereafter. After expiry of three weeks for furnishing the reply, the respondents shall pass appropriate orders after giving personal hearing to the petitioner.

12.These writ petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Taxes Officer,
50/52, Jawahar Street,
Karaikudi,
Sivagangai District - 630 001.

+2cc to M/S.B.ROOBAN, Advocate SR.Nos.72540&72541
+1cc to Special Government Pleader, SR.No.72912

Mrn/RR
MAS/SKN-RSK/SAR2:07.11.2017:4P-6C

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