IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.3737 to 3742 of 2018 &
W.M.P.Nos.4551 to 4556 of 2018

Medopharm Private Limited
Represented by its Directgor
Mr.M.Sardarmal Chordia
No.25, Puliyur II Main Road
Kodambakkam
Chennai - 600 024 .. Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT)
MMDA Colony Assessment circle
10, Palaniappa Maligai, IInd Floor
Greams Road
Chennai - 600 006 .. Respondent in all W.Ps

W.P.No.3737/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN 33390620386/2010-11, dated 29.01.2018, and quash the same.

W.P.No.3738/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN 33390620386/2011-12, dated 29.01.2018, and quash the same.

W.P.No.3739/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN 33390620386/2012-13, dated 29.01.2018, and quash the same.

W.P.No.3740/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN 33390620386/2013-14, dated 29.01.2018, and quash the same.

W.P.No.3741/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN 33390620386/2014-15, dated 29.01.2018, and quash the same.

W.P.No.3742/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN 33390620386/2015-16, dated 29.01.2018, and quash the same.

For Petitioner : Mr.N.Prasad
For Respondent : Mr.M.Hariharan
Addl. Govt. Pleader (T)

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader (Tax), takes notice for the respondent. By consent, the main writ petitions are taken up for disposal at the admission stage itself.

2. The petitioner has filed the above writ petitions to issue a Writs of Certiorari to call for the records on the file of the respondent dated 29.01.2018 for the assessment years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 and to quash the same.

3. It is the case of the petitioner that before passing the impugned revision of assessments, the respondent has not issued the invoice-wise details of the transactions in respect of which he alleged that the vendors of the petitioners has not discharged the provisions of Tamil Nadu Value Added Tax Act, 2006, hence, there is violation of principles of natural justice.

4. The learned counsel appearing for the petitioner submitted that the issue involved in the present writ petitions are squarely covered by the judgment of this court reported in 2017 99 VST 301 (Mad) [Coromandel Engineering Company Ltd. v. Assistant Commissioner (CT), Esplanade Assessment Circle, Chennai] and also the judgment reported in 2017 (99) VST 343 (Mad) [JKM Graphics Solutions Private Limited v. Commercial tax Officer, Vepery Assessment Circle, Chennai] wherein, in paragraph Nos. 6 to 8, it has been held as follows:-

> "6.With regard to the assessment to be made based on mismatch from the information available in the departmental website, since this issue was a recurrent issue in all the assessment circulars, the Commissioner thought fit to issue a circular dated 01.04.2015 in Circular NO.10/2015/D3/8562/2014. At this stage, it would be worthwhile to reproduce the directions issued to the Assessing Officer in the said Circular.

"Therefore, it is ordered that all notices issued to the dealers must mandatory enclose details of the facts referred to as the basis for the additional tax demand proposed in the notice as below:

(a)In case of return mismatch-based notices, invoice-wise data of mismatches for each demand must be mandatorily attached to the notice either in print form or as a CID or send as email (in case it is voluminous).

(b)The fact of enclosing such mismatch transaction date (Invoice level) shall be clearly mentioned entered in the notice and acknowledgment receipt obtained.

(c)Personal hearing, if requested by the dealer, shall be mandatorily ensured and a patient hearing provided to the dealer in order to understand the basis of his contentions and the same should be recorded in the assessment proceedings.

(d)Orders passed thereafter must be speaking and must address every contention raised by the dealer in clear terms to ensure that the orders are fair and justified not only in appellate forum but also it is felt by the dealers there by to which the dealer might not tend recourse."

7.In terms of the above circular, in cases of mismatch invoice-wise data for mismatch to each demand must be mandatorily attached or to the notice either in print form or as a CID or send as email (in case it is voluminous). Further, the fact of enclosing such mismatch transaction date (Invoice level) shall be clearly mentioned entered in the notice and acknowledgment receipt obtained. Further, personal hearing has been held to be mandatorily granted and the Assessing Officer was directed to give a patient hearing to the dealer in order to understand the basis of his contentions and the same should be recorded in the assessment proceedings. Further, the circular precludes that the order of assessment must be a speaking order and must address every contention raised by the dealer in clear terms to ensure that the orders are fair and justified not only in appellate forum but also it is felt by the dealers there by to which the dealer might not tend recourse.

> 8.On perusal of the impugned order, it is evidently clear that none of these parameters mentioned in the Circular have been adhered to. Therefore, on these grounds, the petitioner is entitled to succeed. Accordingly, the writ petitions are allowed and the impugned orders are quashed and the matters are remanded to the respondent for fresh consideration, who shall furnish all the details with regard to the mismatch as per the directions issued by the Commissioner in the circular, after which the petitioner is entitled to submit their objections and after affording an opportunity of personal hearing, re-do the assessment in accordance with law by passing a speaking order dealing with all the contentions raised by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed."

5. Mr.M.Hariharan, learned Additional Government Pleader (Tax), appearing for the respondent also submitted that issue involved in the present writ petitions are squarely covered by the judgment reported in 2017 99 VST 301 (Mad) [cited supra] and 2017 (99) VST 343 (Mad) [cited supra], therefore, the impugned orders may be set aside and the matters may be remanded to the respondent for fresh consideration.

6. In view of the submissions made by the learned counsel on either side, following the ratios laid down in the judgment reported in 2017 99 VST 301 (Mad) [cited supra] and 2017 (99) VST 343 (Mad) [cited supra], the writ petitions are allowed and the impugned orders are quashed and the matters are remanded to the respondent for fresh consideration, who shall furnish all the details with regard to the mismatch as per the directions issued by the Commissioner in the circular, after which the petitioner is entitled to submit their objections and after affording due opportunity of personal hearing, re-do the assessment in accordance with law by passing a speaking order dealing with all the contentions raised by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

Rj

To

The Assistant Commissioner (CT)
MMDA Colony Assessment circle
10, Palaniappa Maligai, IInd Floor
Greams Road
Chennai - 600 006

+1 CC to Mr. Inbarajan, advocate sr 13338
+1 CC to Govt Pleader sr 13315.

W.P.Nos.3737 to3742 of 2018 &
W.M.P.Nos.4551 to 4556 of 2018

CNR(CO)
SP(08/03/2018)