In the High Court of Judicature at Madras

Dated : 11.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.13970 to 13972 of 2018
& WMP.Nos.16504 to 16506 of 2018

M/s.S.K.Trading, rep.
By its Proprietor ...Petitioner

Vs

The State Tax Officer, Gudiyatham
(East) Assessment Circle,
Gudiyatham. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent and quash the orders passed by the respondent respectively in TIN No.33574244886/2014-15, TIN No.33574244886/2012-13 and TIN No. 33574244886/2013-14, all dated 31.1.2018 and direct the respondent to pass fresh orders as per circular instructions of the Commissioner of Commercial Taxes, Chennai in Circular No.29/2015 in D3/22678/2015 dated 11.8.2015 after providing an opportunity of personal hearing to the petitioner and follow the various decisions of the Madras High Court relating to mismatch details as per Departmental Website.

For Petitioner : Mr.C.Baktha Siromani
For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed these writ petitions challenging the impugned orders for the years from 2012-13 to 2014-15.

3. Two issues arise for consideration in these cases. The first issue is as to whether the petitioner, while calculating the turnover, is entitled to deduct trade discounts granted to them by the cement manufacturer, to whom, the petitioner was a

stockist/dealer. The second is with regard to mismatch between the details furnished in Annexure I of the petitioner and Annexure II of the other end dealers. Admittedly, the petitioner did not send any reply to the revision notices dated 31.7.2017. However, the respondent also did not finalize the assessments and the matters appear to have been kept pending.

4. Some time during March 2018, the petitioner was stated to have personally met the Assessing Officer and at that juncture, they were handed over the assessment orders dated 31.1.2018. The petitioner received the assessment orders only on 25.3.2018. Immediately, the petitioner gave representations on 27.3.2018. Since those representations have not yet been considered, the petitioner is before this Court challenging the assessment orders.

5. So far as the first issue is concerned, the Commissioner of Commercial Taxes issued a circular bearing Circular No.29/2015 dated 11.8.2015 wherein the Commissioner ordered that the Assessing Officer should make a random inspection and wherever it is revealed that the dealer has sold goods less than the purchase value, a thorough scrutiny for the whole year shall be made, based on which, reversal of input tax credit and the tax payable shall be determined under the appropriate provisions of the said Act.

6. In so far as the legal position is concerned, the respondent cannot dispute the same and if the petitioner is able to establish that they received trade discounts, they are entitled to claim deduction while computing the taxable turnover. In this regard, it is beneficial to take note of the decision of the Hon'ble Supreme Court in the case of M/s.Maya Appliances (P) Ltd. Vs. Additional Commissioner of Commercial Taxes [reported in (2018) 53 GSTR 49].

7. In so far the second issue is concerned, namely with regard to mismatch of the details in Annexure I of the petitioner and Annexure II of the other end dealers, this Court issued directions to make a thorough enquiry into the matter, before which, full details should be furnished to the dealer, so that the dealer can submit an effective reply. Thus, the respondent is required to take note of the above referred to legal position while completing the assessment. The clarification issued by the Commissioner of Commercial Taxes is binding on the Assessing Officer, who is a subordinate to the Commissioner of Commercial Taxes. In this regard, the respondent should bear in mind the decision of the Hon'ble Division Bench of this Court in the case of Arumuga Mudaliar Vs. Registrar, Tamil Nadu Taxation Special Tribunal [reported in (2003) 129 STC 141].

8. Apart from the above, this Court also took note of the fact that though the revision notices dated 31.7.2017 were issued, the orders dated 31.1.2018 were served on the petitioner only on 25.3.2018 and the orders dated 31.1.2018 probably might have been prepared and kept in the file, but were not dispatched. Unless and until the orders are dispatched and served on the dealer, the respondent cannot claim that already orders were passed. Therefore, this Court is of the view that there is no effective compliance of the principles of natural justice.

9. For all the above reasons, the writ petitions are disposed of by directing the petitioner to treat the impugned proceedings as show cause notices and submit their objections within a period of three weeks from the date of receipt of a copy of this order. If the petitioner requires further details, it is open to them to seek the same from the Assessing Officer, who shall furnish the same without fail. The petitioner is also entitled to produce records such as balance sheet, etc., to establish that they received trade discounts and after making a thorough enquiry, the respondent shall complete the assessments in accordance with law. Till then, no coercive action shall be initiated against the petitioner for recovery of tax and penalty as quantified in the impugned assessment orders. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer, Gudiyatham (East) Assessment Circle, Gudiyatham.

+1cc to Mr.C.Bhakthasiromoni, Advocate sr.36839
+1cc to the Government Pleader Sr.36740

WP.Nos.13970 to 13972 of 2018&
WMP.Nos.16504 to 16506 of 2018

srg 21/06/2018