In the High Court of Judicature at Madras

Dated : 20.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.14749 to 14751 of 2018

& WMP.Nos.17427 to 17429 of 2018

M/s.R.P.Telebuy Skyshop (P) Ltd.,
rep.by its CEO Mr.C.Vasanth ...Petitioner in all Wps

Vs

The Assistant Commissioner (ST),
Arumbakkam Assessment Circle,
F-50, II Floor, I Avenue, Anna
Nagar East, Chennai-50. ...Respondent in all Wps

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 in the impugned orders respectively in TIN Nos.33571463896/ 2013-14, 33571463896/2014-15 and 33571463896/2015-16, all dated 19.3.2018, quash the same and further direct the respondent to pass a fresh order after providing personal hearing opportunity and after considering reply of the petitioner in the merits.

For Petitioner : Mr.R.Sridhar
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 is aggrieved by the impugned assessment orders passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years from 2013-14 to 2015-16.

3. The respondent issued revision notices dated 24.4.2017 proposing to reverse the input tax credit availed by the petitioner on the ground that on cross verification of Annexure I of the petitioner and Annexure II of the other end dealers, there was a mismatch in the sales, which were reported.

It was further stated that the petitioner effected purchases from registration cancelled dealers. There was also an allegation of purchase suppression based on details acquired from the check post. The respondent also issued the notices dated 08.12.2017.

4. The petitioner submitted their reply dated 15.12.2017. With regard to the mismatch issue, the petitioner requested invoice-wise details of the buyers and the sellers. With regard to the allegation that the petitioner effected purchases from registration cancelled dealers, the petitioner produced invoice copies and payments effected through banking channels and asserted that the registration certificates of those dealers were valid on the date when they effected transactions with them and that the cancellation of the registration certificates was with retrospective effect.

5. With regard to purchase from the other end dealers Annexure II, the petitioner, in their reply, stated that normally they did not report non trade products like packing materials, plastic covers, packing carton boxes, stationery, indirect expenses like purchase staff welfare and other non trade purchase items. With regard to sales from other end dealers Annexure I web report, in their reply, the petitioner stated that they are in customer retail trading, that their sales are directed to individual customers, that the orders are collected over telephone and delivered at buyer's door steps and that there are no retail counter sales. The petitioner further stated that generally, they reported their monthly sales turnover in tax rate-wise. The petitioner also stated that they sold the goods to their franchisee with the tax payer identification number and that the same has been reported in the month sales turnover as B2C. The petitioner further stated that they are likely to give a detailed note to prove their stand. Even with regard to suppression, the petitioner stated that it was a stock transfer, which has been reported to the Department and all the requisite Form F for the year has been filed.

6. After receipt of the reply, the respondent furnished the invoice-wise details with regard to the mismatch issue and on receipt of the same, the petitioner gave a representation dated 09.2.2018 requesting some more time to submit a comprehensive reply point-wise. However, the petitioner did not submit their further reply. Consequently, the respondent completed the assessments and passed the impugned assessment orders.

7. On a perusal of the impugned orders, this Court finds that the respondent has not dealt with the issues where the petitioner gave their explanation namely with regard to purchases from the registration cancelled dealers, purchase from other end dealers Annexure II and sales from other dealer

Annexure I web report and also the allegation of purchase suppression. While it may be true that the petitioner did not reconcile the mismatch issue after receiving the invoice-wise details, the respondent should have considered the other issues, for which, the petitioner gave their reply. This Court finds that no opportunity of personal hearing was granted.

8. The learned counsel for the petitioner submits that if one more opportunity is granted to the petitioner, they will submit a comprehensive reply and furnish all the details.

9. Considering the fact that wherever explanation has not been considered by the respondent, this Court is of the view that one more opportunity can be granted to the petitioner to go before the respondent.

10. Accordingly, the writ petitions are disposed of with a direction to 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. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessments on merits and in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (ST),
Arumbakkam Assessment Circle,
F-50, II Floor, I Avenue,
Anna Nagar East,
Chennai-50.

+1cc to Mr.R.Sridhar, Advocate, S.R.No. 38447
+1cc to the Government Pleader, S.R.No. 39078

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NM(CO)
BM 29/06/2018