BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.07.2018
CORAM
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.12793 of 2015
and
M.P.(MD)No.1 of 2015

M/s.Bunge India Private Limited,
Represented by its Factory Manager
and Authorized Signatory Mr.Pritosh Singh,
Edamalaipatti Pudur,
Tiruchirappalli - 620 012. ... Petitioner

-Vs-

The Assistant Commissioner(CT),
Srirangam Assessment Circle,
Srirangam,
Tiruchirappalli - 620 006. ...Respondent

Prayer: Writ Petitions - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in TIN No.33473462830/2014-15, dated 15.06.2015 on the file of the respondent and quash the same as arbitrary, illegal, unreasonable and direct the respondent to pass an order after considering the objection and documents filed by the petitioner in accordance with law.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel for Mr.S.Karunakar

For Respondent : Mr.A.Muthu Karuppan
Additional Government Pleader

ORDER

The writ petitioner is a Company registered under the Provisions of the Companies Act, 1956 and an assessee registered under the Central Sales Tax Act, 1956. The assessee was a dealer in edible oil. He was an importer of edible oil from foreign exporters on Highseas Purchase and Bond Transfer Purchase. During the course of his business dealing, he imported commodities. The petitioner has filed returns for the assessment year 2014-15. On cross-verification of the returns for the period of September 2014, the assessing authority found certain import omissions and issued a revision notice to the petitioner dated 12.12.2014. The petitioner submitted his objections on 14.01.2015. However, on 15.06.2015, the respondent has passed an order confirming certain proposals. Aggrieved over the order of the respondent, the petitioner is before this Court.

2. According to the petitioner, any transaction made during the import will be based on the purchase invoices, which should not include the custom duty levied on the goods purchase, whereas the respondent has added the custom duty for the purpose of calculating the tax element, which is improper. He would also submit that the Commissioner of Commercial Tax also issued a circular observing that the method adopted by the respondent is not correct.

3. Per contra, the learned Additional Government Pleader appearing for the respondent would vehemently contend that the petitioner has not come forward with the proper document to establish that he had purchased imported commodities. In the absence of any documentary evidence, it should be construed that he has purchased from an importer that includes the custom duty also. Therefore, the calculation made by the respondent vide assessment order is legal and sustainable and does not warrant interference.

4. Heard the contentions of both sides.

5. From the perusal of the revision notice repeatedly issued by the respondent, it is seen that several proposals in respect of the import omissions were made. Even though the petitioner submitted his objections, the respondent, while passing the impugned order, has not considered or answered or discussed the objections. Proposals contain duplication of the transactions on the basis of the Bill of Entries made at various points. Secondly, even though the proposal was issued with a revision notice, ultimately, the impugned order has been decided on a different proposal. The respondent has not clearly expressed as to whether original proposals were accepted or rejected or dropped but decided on a new set of proposals, which emerged during the course of enquiry.

6. It is well settled that when a proposal is issued, the objections should be called for only in respect of the said proposal and the assessing authority shall confine himself to the proposal given. If at all he comes across a new set of omissions or defects or discrepancies, it is incumbent on the assessing authority to formulate a new proposal incorporating all the defects and call for objections from the dealers and thereafter, proceed in accordance with law and in the principles of natural justice and shall pass orders.

7. In the instant case, even though the respondent initiated the proposal in one set of defects, he had decided the matter on the basis of new proposal, which was not communicated to the petitioner and to which, the petitioner has not submitted his objection. Such procedure adopted by the respondent resulting in the impugned order is in violation of principles of natural justice. Therefore, this Court has no hesitation to set aside the impugned order in TIN No.33473462830/2014-15, dated 15.06.2015. Accordingly, the impugned order is set aside. The matter is remitted back to the respondent for fresh consideration. The respondent shall formulate

comprehensive proposal and issue a revised notice to the petitioner and call for objections. After affording fullest opportunity and opportunity of personal hearing, he shall pass orders on merits and in accordance with law. Such exercise shall be done within a period of three months from the date of receipt of a copy of this order.

8. With the above directions, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Assistant Commissioner(CT),
Srirangam Assessment Circle,
Srirangam,
Tiruchirappalli - 620 006.

+1CC to Mr.S.Karunakar, Advocate, SR.No.75335
+1CC to the Special Government Pleader SR.No. 75658

Order made in
W.P.(MD)No.12793 of 2015
26.07.2018
(2/3)

SM
ES/SKN/RSK/SAR 1/20.09.2018/4P/4C