IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 10.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.3692 & 3693 of 2012

M/s.Ashok Traders,
Rep. by its Proprietor - P.Abeyakumar,
No.77/2, Elakuppan Street,
Arcot,
Vellore District. ...Petitioner in all WPs

Vs

The Commercial Tax Officer,
Arcot,
Vellore District. ...Respondents in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the of the impugned proceedings of the respondent in TIN No: 33364580379/2007-2008 and TIN No: 33364580379/2008-2009 dated 27.01.2012, quash the same as arbitrary, illegal and contrary to judicial discipline and further direct the respondent to pass fresh orders duly complying with the directions of the Joint Commissioner (CT), Vellore in R.P.No.15/2009 dated 22.02.2010.

For Petitioner : Mr.S.Rajasekar
(in all WPs)

For Respondent : Ms.Dhanamadhri, GA
(in all WPs)

COMMON ORDER

At the time of assessment, the Assessing Officer had found certain defects for which compounding fees was levied and the same was also paid by the assessee. The assessee had filed a revision before the Joint Commissioner (CT), Vellore and by an order dated 22.02.2010, the revisional authority had remanded the issue to the Assessing Officer for re-consideration with the following observations:

"At the time of hearing the Authorized Representative produced the purchase and sale invoices along with the copy of the monthly returns to prove his claim. The verification of the same did show that the gross value inclusive of tax was reported with regard to both the purchases as well as sales and that the invoices did contain tax indication. However, whether this was shown to the Learned Audit Authority is not clear from the statement recorded at the time of Audit. Therefore this is a fresh fact brought to the defence of the petitioner. If the reporting of turnover was done on gross value inclusive of tax the petitioner cannot be negatived of the Input Tax Credit because there was no failure to claim input tax credit in respect of any transaction of purchase or sale as such. If all the invoices both received and issued brought to account and reported earlier, then the petitioner is entitled for the correct Input Tax Credit as per invoices and also the output tax on the sales invoices. But these facts both in respect of the purchases and sales with regard to charging of tax need to be verified in detail. The Assessing Authority has to verify and confirm that the gross value reported was as per the invoice both for the purchase and sales. The Input Tax Credit on purchase, need to be verified by cross verification, for ascertaining the correctness of the claim and hence the Assessing Authority is directed to verify all the invoices both in respect of purchases and sales and if it is found that the same was reported in gross value, the tax portion may be segregated and the claim for both input and output tax may be granted to the petitioner accordingly. With regard to the transaction not reported to the Department petitioner would not be entitled for the same as the time limit as prescribed in Section 19(11) of the TNVAT Act 2006 had lapsed. With this direction the issue relating to the third defect is remitted back to the Assessing Authority for verification and pass appropriate orders if warranted. However, the wrong reporting of rate of tax is apparent and hence the levy of Compounding fee for this defect is also held as justified."

2. In this background, the Assessing Authority had chosen to issue notices to the petitioner on 30.12.2011 for the assessment years 2007-2008 and 2008-2009. In the said circumstances, the order passed by the revisional authority was totally ignored and the assessment was made without reference to the observations made by the revisional authority. Pursuant to the notices, the petitioner had given his objections on 12.01.2012, referring to the observations made by the revisional authority and for re-

consideration of the assessment. It is in this background, the impugned assessment orders came to be passed, which are under challenge in the present writ petitions.

3. The learned counsel for the petitioner submitted that though the revisional authority had made certain positive observations that the gross value inclusive of tax with regard to both purchase as well as sale was reflected in the invoices, the Assessing Officer was not justified in observing otherwise.

4. The learned Government Advocate on the other hand submitted that the submissions of the petitioner that the directions of the revisional authority has not been considered, is incorrect. On the other hand, the directions in the revision order were carefully considered along with the findings of the Inspecting Officer with reference to the records available. The learned Government Advocate also submitted that as per the directions of the Joint Commissioner, the dealers were requested to produce the relevant purchase and sale bills to ascertain the facts and for cross verification, which they have failed to produce.

5. I am not in conformity with the objections raised by the respondent herein. On a perusal of the revisional order, it is seen that the revisional authority had given a specific finding after verification of the sales bills that, the gross value inclusive of tax was reported with regard to both the purchase as well as the sale and that the invoices did contain tax indication. The revisional authority had also observed that if the reporting of turnover was done on the gross value inclusive of tax, the petitioner cannot be negatived of the Input Tax Credit, since there was no failure to claim input tax credit in respect of any of the transactions of purchases or sales. It is in these circumstances, the revisional authority was of the view that these facts in respect of the purchases and sales with regard to charging of tax requires re-verification. It is also seen that the sale deeds have been verified by the Assessing Officer, which is also reflected in the impugned orders. Further, the assessing authority has subsequently observed that though sufficient time was granted to the assessee, they had not produced the sales bills, which is contrary to the statement. Nevertheless, since the petitioner claims that he has already produced the purchase and sale bills before the assessing authority, it would be appropriate to direct the respondent herein to re-consider the petitioner's objections in line with the observations made by the revisional authority and also on the basis of the purchase and sale bills of the petitioner.

6. In the light of the above observations, the impugned proceedings of the respondent in TIN No: 33364580379/2007-2008

and TIN No: 33364580379/2008-2009, dated 27.01.2012, are set aside and the matter is remanded back to the respondent herein for a fresh consideration. The petitioner herein is also granted liberty to file a fresh objection before the respondent herein along with the necessary purchase and sale bills, within a period of 8 weeks from the date of receipt of copy of this order. On receipt of such a objection, the respondent herein shall consider the same in the light of the observations made by the Joint Commissioner, Vellore on its own merits and in accordance with law, within a period of 12 weeks there from.

7. With the above observations, the writ petitions stand disposed of. No costs.

sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

hvk
To
The Commercial Tax Officer,
Arcot,
Vellore District.

+1cc to M/s.R.Hemalatha, Advocate, sr. no.46655
+1cc to The Government Pleader, sr.no.47098

W.P.Nos.3692 & 3693 of 2012

NRL(CO)
RMP(09/07/2019)