BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)No.19275 of 2015
and
MP(MD).No.1 of 2015

M/s.Jay Jay Bricks,
Represented by its proprietor P.Jefferson Samuel Raj,
3/432/6, Theri Road,
Pudukkottai, Tuticorin. ... Petitioner

Vs

The Commercial Tax Officer-III (Main),
Tuticorin. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33245923119/2012-13, dated 15.06.2015 and quash the same as illegal and contrary to Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 and direct the respondent to pass assessment order afresh after affording opportunity of being heard and also considering the reply dated 03.01.2014 and 20.07.2015.

For Petitioner : Mr.N.Sudalaimuthu

For Respondent : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the impugned assessment order dated 15.06.2015, passed by the respondent in TIN.No.33245923119/2012-13.

2.It is the case of the petitioner, that he is a registered dealer under the Tamil Nadu Value Added Tax, 2006. It is also the case of the petitioner that in the impugned assessment order, the respondent has not taken note of the fact that both the petitioner who is a purchaser of the goods as well as the other end seller, namely, Tvl.PMR Agencies (TIN No.33465822380) have reported their respective sales and purchases. According to the petitioner, there was no request made by the respondent either to the petitioner who is the purchaser or to the other end sellers calling upon them to produce the copies of the invoices/purchase orders and other relevant documents pertaining to the said purchases made by the petitioner. According to the petitioner without giving an opportunity to produce the relevant documents pertaining to the purchases, the respondent has passed the impugned assessment order, dated 15.06.2015, calling upon the petitioner to pay the balance tax of Rs.3,07,370/- for the assessment year 2012-13, on the ground that the petitioner has not complied with Section 19(1) of the Tamil Nadu Value Added Tax Act, 2006, by not producing the original tax invoice relating to the purchase made by the other end seller, namely, Tvl.PMR Agencies (TIN No.33465822380). In such circumstances, the instant Writ Petition has been filed challenging the impugned assessment order.

3.Heard Mr.N.Sudalaimuthu, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent.

4.The learned counsel for the petitioner drew the attention of this Court to the reply sent by the petitioner, dated 03.01.2014 to the pre revision notice sent by the respondent on 07.10.2013. He further submitted that as seen from the reply, the petitioner has enclosed annexure-II for the purchases effected by the other end seller, namely, Tvl.PMR Agencies (TIN No.33465822380) and they have also submitted that they have not taken any input tax credit for voucher purchase under Section 12 of the Tamil Nadu Value Added Tax Act, 2006. It is also submitted by the learned counsel for the petitioner that the other end sellers are also registered under the Tamil Nadu Value Added Tax Act, 2006 and they come within the same tax circle as that the petitioner and if any further clarification is required, the respondent could have also requested the other end sellers for clarification.

5.The learned counsel for the petitioner drew the attention of this Court to the impugned assessment order and submitted that the aforesaid objections raised by the petitioner was not duly considered by the respondent. He also drew the attention of this Court to the Hon'ble Division Bench this Court, in the case of ***Assistant Commissioner (CT), Presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Limited*** reported in ***[2017] 99 VST 341 (Mad)*** and submitted that even if the selling dealer failed to file returns or disclose the turnover in question to pay tax thereon, it cannot be a ground for reversal of input tax credit in the hands of the purchasing dealer. According to the petitioner, in the instant case, the selling dealer as well as the purchasing dealer have reported their sales and purchases and therefore, the petitioner stands in a even better footing. Therefore, in such circumstances, the learned counsel for the petitioner submitted that the respondent has violated the principles of natural justice and therefore, the impugned assessment order has to be quashed.

6.Per contra the learned Additional Government Pleader appearing for the respondent would submit that there is an alternative efficacious appellate remedy available to the petitioner under Section 51 of the Tamil Nadu Value Added Tax Act, 2006. It is also his case that the objections raised by the petitioner in his reply dated 03.01.2014 were duly considered by the respondent in the impugned assessment order and therefore no ground has been made out by the petitioner for quashing the same by this Court.

Discussion:

7.It is an admitted fact that both the petitioner who is the purchaser as well as the other end seller, namely, Tvl.PMR Agencies (TIN No.33465822380) have reported to the respondent about the sales and purchases made and there is no suppression of the said sales or the purchases by either of them. The only basis on which, the tax has been imposed on the petitioner is that the original tax invoices pertaining to the sales effected by the petitioner were not produced to the respondent. Admittedly, no request was made either to the petitioner or to the other end sellers requesting them to produce copies of invoices. Further, both the other end seller as well as the petitioner who is a purchaser belong to the same tax circle under the respondent. The decision of the Hon'ble Division Bench of this Court in the case of ***Assistant Commissioner (CT), Presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Limited*** reported in ***[2017] 99 VST 341 (Mad)*** cited by the learned counsel for the petitioner has held that even if selling dealer fails to file returns or disclose the turnover in question and pay tax thereon, the respondent cannot reverse the input tax credit on the hands of the purchasing dealer. In the instant case, the purchasing dealer as well as the other end seller have reported their sales and purchase to the respondent and there is no suppression of the sale or the purchase to the respondent by either of them. All these factors were not duly considered by the respondent in the impugned assessment order. Further no opportunity of personal hearing was given to the petitioner while passing the impugned assessment order.

8.For the foregoing reasons, this Court is of the considered view that the impugned assessment order, dated 15.06.2015, passed by the respondent in TIN.No.33245923119/2012-13, is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders, after giving sufficient opportunity to the petitioner to raise all objections available to him under law and also grant him the right of personal hearing within a period of eight weeks from the date of receipt of a copy of this order.

9.With the aforesaid directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar

sji

To

The Commercial Tax Officer-III (Main),
Tuticorin.

1 CC to M/s.SPL GP (SR-52255[F] dated 07/03/2019)

W.P.(MD)No.19275 of 2015
and
MP(MD).No.1 of 2015

05.03.2019

DS/ /SAR- (25.03.2019) 4P 3C