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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) Nos.1560 to 1562 and 1617 of 2017

and

W.M.P. (MD) Nos.1257 to 1259 & 1326 of 2017

M/s.Vadamalayan Medi Pharma,
Rep., by its Partner Dr.V.Pugalagiri,
No.15, Jawahar Road,
Madurai 625 002.

... Petitioner in all
Writ Petitions

Vs.,

The Commercial Tax Officer,
Chokkikulam Assessment Circle,
Commercial Tax Buildings,
Madurai.

... Respondents in all
Writ Petitions

COMMON PRAYER: Writ Petitions 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 TIN 33915002754/2010-11, 2013-14, 2012-13 & 2011-12 respectively dated 30.11.2016 and to quash the same is wholly without jurisdiction being contrary to the judgment of this Court reported in the case of Infiniti Wholesale Limited Vs.Assistant Commissioner (CT) Koyambedu Assessment Circle, Chennai reported in (2015) 82 VST 457 and direct the respondent to pass assessment order afresh after furnishing records as requested by the petitioner vide letter of objections dated 12.10.2015 and 08.02.2016 including the opportunity of cross examination to the petitioner within such time.

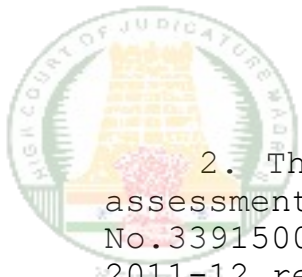
In all Writ Petitions:

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.M.Jeyakumar,
Additional Government Pleader

C O M M O N O R D E R

Since the issue involved in all the writ petitions are one and the same, all the writ petitions are disposed of by this common



2. The instant writ petitions have been filed challenging the assessment order dated 30.11.2016 passed by the respondent in TIN No.33915002754 for the Assessment years 2010-11, 2013-14, 2012-13 & 2011-12 respectively.

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3. According to the petitioner, the impugned assessment order is contrary to the judgment of the Division Bench of this Court made in the case of ***Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle, Chennai*** reported in ***(2015) 82 VST 457*** and therefore, he seeks for a direction to the respondent to pass assessment order afresh after furnishing records as requested by the petitioner vide letter of objection dated 12.10.2015 and 08.02.2016 including the opportunity of cross examination to the petitioner within such time as may be directed by this Court.

4. It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006. According to the petitioner, they have filed their monthly returns for the Assessment years 2010-11, 2011-12, 2012-13 & 2013-14 which has also been accepted by the respondent under Section 22(2) of the TN VAT Act, 2006. But, according to the petitioner, all of a sudden, the respondent proposed to revise the assessment for the Assessment Years 2010-11, 2011-12, 2012-13 & 2013-14 and they sent a pre-revision notice dated 09.09.2015 proposing to reverse the input tax credit claimed by the petitioner on the ground that:

- (a) There is a difference of sales turnover between returns and Profit & Loss Account;
- (b) In the absence of details regarding the amount of discount received, the turn over disclosed by the petitioner in the monthly returns filed by them earlier is liable to be taxed at 4%;
- (c) Wrong claim of Input Tax Credit on inter state purchases;
- (d) Purchases from RC cancelled dealers: According to the respondent, as per section 19(16) of the TN VAT Act, 2006, claim of input tax credit in respect of purchases from RC cancelled dealers is liable to be taxed; and
- (e) *Annual cross verification*: According to the respondent on verification of annual cross verification report available in their departmental website, it was noticed that the petitioner claimed input tax credit on transactions but no entries were available in Annexure II of the other end dealer's returns.

5. According to the petitioner, two detailed replies, one dated 13.10.2015 and another dated 08.02.2016 were given as to why the respondents are not entitled to reverse the input tax credit



claim made by the petitioner. In the said reply, according to the petitioner, detailed replies were sent on 13.10.2015 and 08.02.2016 by the petitioner, wherein they have stated -

(a) There is no difference of sales turn over between the monthly returns and Profit & Loss Account statement, as pointed out in the pre-revision notice.

(b) They have also enclosed the Profit & Loss statement and monthly return abstract for the ready reference of the respondents. As per the Profit and Loss Statement, their sales turnover, Profit and Loss Account is Rs.17,28,54,024/- and the sales turnover monthly returns is Rs.17,28,53,994/- and the difference is Rs.30/- Insofar as the discount claim made by the respondent is concerned, the petitioner in their reply have submitted relevant supportive documents to show that there is no connection between the input tax credit availed or price difference discount received.

(c) They have also stated in the reply that they have not disturbed the tax already paid by the selling dealer as required under Rules 10(6) II (c) of TN VAT Rules, 2007.

(d) They have also stated that as per the explanation 11(II) of Section 2(41) of the TN VAT Act, 2006 any cash or any discount on the price allowed with respect of any sales and any amount refund in respect of articles returned by customers shall not be included in the sales turnover.

(e) They have also referred to various authorities in support of their case in the said reply.

6. Insofar as the claim made by the respondent regarding the annual cross verification and mismatch, the petitioner in their reply had requested for the details of other end sellers, who have not reported the sales effected to the petitioner. It was also stated in the reply that there is no suppression by the petitioner and all purchases effected by them from the other end sellers have been fully disclosed. Insofar as the claim made by the respondent towards purchases made from RC cancelled dealers, it was clarified by the petitioner in their replies that in respect of some of the sellers, wrong TIN numbers were uploaded and the details of the wrong TIN numbers as well as the correct TIN numbers of the other end sellers were also furnished by the petitioner to the respondent in their replies.

7. Insofar as the penalty claim made by the respondent under Section 27(3), 27(4) of the TN VAT Act, 2006 is concerned, they had requested the respondent to drop the said proposal since there is no suppression or wrong availment of input tax credit by them. By Assessment order dated 30.11.2016, the respondent revised the assessment for the assessment years 2010-11, 2011-12, 2012-13 &



2013-14 by passing the following order:

"As rightly observed by the dealers, to claim input tax credit on the purchases, the tax paid by the purchasing dealer to the selling dealer in the form of tax invoice on their purchases, evidencing the tax paid is enough. However, in this case, the dealers without producing the original tax invoice, citing several judgment in their favour. Further, as requested by the dealers in their reply, invoice wise details of mismatch, through CD was given to the dealers which was received by them on 19.08.2016. Even after lapse of 3 months, the dealers failed to produce the original invoices. In view of the above facts and circumstances of the case, it is crystal clear that the dealers have no original tax invoices with them. In the absence of production of original tax invoices as required under the provisions of TN VAT Act, the reversal of claim of ITC on annual scrutiny to the tune of Rs.29,32,343/- is confirmed. Further, levy of penalty under Section 27(4) is automatic and so, the levy of penalty is also confirmed."

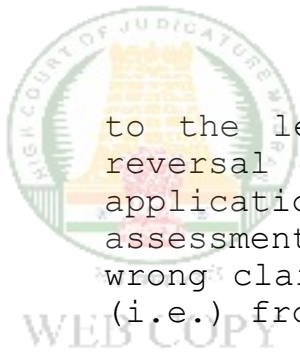
Aggrieved by the impugned assessment order, the instant writ petition has been filed.

8. Heard Mr.S.Karunakar, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent in all the writ petitions.

9. The learned counsel for the petitioner drew the attention of this Court to the impugned assessment order and in particular, referred to the following observations of the respondent.

"In continuation of this office reply we bring to your kind notice that we had wrongly noted the seller's previous TIN number instead of new TIN number as noted below. We enclose herewith the relevant purchase bill copies for you for ready references. We request that this fact may please be verified with the other end dealer and drop the proposal as we had purchased the goods from the running dealer who had paid their VAT tax to the department and the input tax credit claimed by us are found correct."

10. As the dealer himself had accepted the wrong claim of income tax credit from the non-existing TIN numbers (i.e.,) from cancelled dealers, the reversal of income tax credit proposal is confirmed. According to the learned counsel for the petitioner, the said observation is absurd since the petitioner has disclosed the names of all the other end sellers for which wrong TIN numbers were furnished, when the petitioner filed their monthly returns earlier and the correct TIN numbers were also given subsequently after the receipt of the pre-revision notice. This being the case, according



to the learned counsel for the petitioner, there cannot be any reversal of input tax credit and according to him, by total non-application of mind, the respondent has observed in the impugned assessment order that the petitioner has themselves accepted the wrong claim of income tax credit from the non-existent TIN numbers (i.e.) from cancelled dealers.

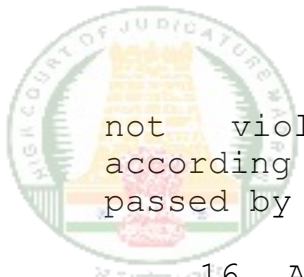
11. According to the learned counsel for the petitioner, all the original tax invoices from the other end sellers were submitted to the respondent during the assessment proceedings and therefore, the observations in the impugned assessment order that original tax invoices were not produced has been passed by total non-application of mind.

12. Learned counsel for the petitioner also drew the attention of this Court to the observations recorded by the respondent insofar as the discount claim is concerned. It is pertinent to point out here that even though the dealers had given above statement, they have not produced any documentary evidences in support of their contention. According to the learned counsel for the petitioner, having produced the Profit and Loss Account as well as the original tax invoices, the aforesaid observations made by the respondent has been passed by total non-application of mind.

13. The learned counsel for the petitioner then drew the attention of this Court to a Division Bench judgments of this Court in the case of **Assistant Commissioner (CT) Thiruverkadu Assessment Circle, vs., Infiniti Wholesale Ltd.**, reported in **(2017) 99 VST 341 (Mad)** and submitted that the petitioner, who is a purchaser cannot be held liable for the fault of the other end seller for non-filing of returns or for non-disclosure of sales to the petitioner. According to the learned counsel for the petitioner, as per the aforesaid judgment, the respondent cannot reverse the input tax credit in the hands of the purchasing dealer. Hence, there is no suppression on his side.

14. Learned counsel for the petitioner also drew the attention of this Court to the **JKM Graphics Solutions Private Limited vs Commercial Tax Officer, Vepery Assessment Circle, Chennai** reported in **(2017) 99 VST 343 (Mad)** and submitted that in case of mismatch, it is for the respondent to cross verify from the other end sellers as well as from other end assessing officer and only thereafter, he found that there was a mismatch and the petitioner being the purchasing dealer can be held liable. According to him, in the instant case, no such cross verification was done by the respondent before the impugned assessment order was passed.

15. Learned counsel for the petitioner also referred to Section 19(20) of the TN VAT Act, 2006 and submitted that the petitioner has fully disclosed the price at which the goods were purchased from the other end sellers and therefore the respondent cannot assess the petitioner for the discount as the petitioner has



not violated section 19(2) of the TN VAT Act, 2006. Therefore, according to the petitioner, the impugned Assessment Order has been passed by total non-application of mind.

16. According to the learned counsel for the petitioner, even though the replies were sent by the petitioner on 12.10.2015 and 08.02.2016 respectively to the pre-revision notice dated 09.09.2015, the impugned assessment order came to be passed only on 30.11.2016. He also drew the attention of this Court to the circular relating to clarifications issued by the Commissioner (CT) dated 20.04.2001 wherein in Sl.No.12 there is a direction to the Commercial Tax Officer to pass assessment orders without undue delay. But according to the learned counsel for the petitioner, in the instant case eight months after the replies being sent by the petitioner, the assessment order has been passed by total non-application of mind.

17. Per contra, the learned Additional Government Pleader for the respondent would submit that the supporting documents were not produced by the petitioner in support of the replies sent by them on 12.10.2015 and 08.02.2016. According to the learned Additional Government Pleader, adequate opportunity was provided to the petitioner to place all documents. But despite, granting adequate opportunity, the petitioner has not made use of those opportunities. A counter affidavit has been filed by the respondents. Since all the objections raised by the petitioner in the replies dated 12.10.2015 and 08.02.2016 were duly considered by the respondent, the only remedy available to the petitioner is to file a statutory appeal under Section 51 of the TN VAT Act, 2006 and therefore, according to the learned Additional Government Pleader, the writ petition is not maintainable.

Discussion:

18. This Court has perused and examined the impugned Assessment Order. In the assessment proceedings, the petitioner has submitted the profit and loss account and has also furnished the original tax invoices in respect of the sales made by them from the other end sellers. But while dealing with the discount claim, the respondent has observed that the petitioner has not produced any documentary evidence in support of their contentions and has levied tax on the turnover of Rs.14,82,362/- @ 4% as per the pre-revision notice sent by them.

19. This Court is of the considered view that the observation of the respondent that the petitioner has not produced any documentary evidence in support of the contention is totally absurd and has been made by total non-application of mind. Insofar as the claim relating to purchases from R.C. cancelled dealers is concerned, the respondent while reversing the input tax credit has observed that the petitioner has accepted the wrong claim of Input tax credit from the non-existing TIN numbers of the other end sellers, which is totally incorrect. Even in the replies dated



12.10.2015 and 08.02.2016 to the pre-revision notice dated 09.09.2015, they have categorically denied that their wrongly claimed input tax credit for non-existing other side canceled dealers. Even before assessment proceedings, they have disclosed the correct TIN numbers of all other end sellers which is also extracted in the impugned assessment order. This being the case, the observation made by the respondent that the petitioner has accepted the wrong claim of ITC from the non-existing TIN Numbers i.e from cancelled dealers is absolutely incorrect.

20. Based on the above said finding , the reversal of input tax credit proposed by the respondent has been confirmed in the impugned assessment order. This Court is of the considered view that the respondent has not applied his mind before coming to the aforesaid conclusion.

21. Insofar as the mismatch claim is concerned, the respondent has observed in the impugned assessment order that the petitioner has not produced the original tax invoices from the other end sellers, whereas all the original tax invoices from the other end sellers were produced by the petitioner. Since according to the respondent, the original tax invoices were not produced by the petitioner, the respondent has come to a wrong conclusion that the input tax credit has to be reversed on the ground of mismatch between the purchases reported by the petitioner and sales reported by the other end sellers. Under the impugned assessment order, a sum of Rs.29,32,343/- towards reversal of input tax credit on account of mismatch was assessed by the respondents, which according to the considered view of this Court has been assessed by total non-application of mind. Consequently, a penalty has also been assessed under Sections 27(3) and 27(4) of the TN VAT Act, 2006, which according to the considered view of this Court has also been passed by total non-application of mind.

22. The judgments relied upon by the learned counsel for the petitioner in the cases of **Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle, Chennai** reported in **(2015) 82 VST 457** as well as the judgment made in the case of **JKM Graphics Solutions Private Limited vs Commercial Tax Officer, Vepery Assessment Circle, Chennai** reported in **(2017) 99 VST 343 (Mad)** are squarely applicable to the facts of the instant case.

23. For the foregoing reasons, this Court is of the considered view that the impugned assessment order dated 30.11.2016 has been passed by the respondent by total non-application of mind and the same will have to be quashed. In the result, the impugned order dated 30.11.2016 is hereby quashed and the matter is remanded back to the respondents for fresh consideration and the respondent shall pass final orders after giving adequate opportunity to the petitioner to raise all objections available to them under law and also by granting them the right of personal hearing and the respondent shall pass final orders within a period of eight (08)



weeks from the date of receipt of a copy of this order by following the judgments of **Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle, Chennai** and **JKM Graphics Solutions Private Limited vs Commercial Tax Officer, Vepery Assessment Circle, Chennai**. Accordingly, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

The Commercial Tax Officer,
Chokkikulam Assessment Circle,
Commercial Tax Buildings,
Madurai.

+1CC TO MR.S.KARUNAKAR, Advocate Sr. No.59221

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 59661, 59662,
59664 & 59665

Common Order made in
W.P. (MD) Nos.1560 to 1562
and 1617 of 2017

05.04.2019

DB (CO)

TR (20.05.2019) 8P 4C