BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)NOS.17497 AND 17498 OF 2019
AND WPMP (MD) NOS.13975 AND 13977 OF 2019

M/s.Pushpam Enterprises
Rep.by its Proprietrix Mrs.Pushpadevi
No.7, Big Bazaar Street,
Kumbakonam
Tanjore District. ... Petitioner in both WPs'

Vs.

The State Tax Officer,
Kumbakonam (Town) Assessment Circle
Kumbakonam. ... Respondent in both WPs'

Prayer in WP (MD) NO.17497/2019: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33283941678/2010-2011 and quash the order dated 30.07.2019 as it is unlawful and violation of the principles of natural justice and further direct the respondent to consider the objections dated 31.03.2016 and 06.06.2019 in all perspective on its merits in terms of decision of this Hon'ble Court reported in 9 VST Page 478 and pass appropriate order in accordance with law.

Prayer in WP (MD) NO.17498/2019: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33283941678/2011-2012 and quash the order dated 31.07.2019 as it is unlawful and violation of the principles of natural justice and further direct the respondent to consider the objections dated 31.03.2016 and 06.06.2019 in all perspective on its merits in terms of decision of this Hon'ble Court reported in 9 VST Page 478 and pass appropriate order in accordance with law.

For Petitioner (in both WPs') : Mr.R.D.Ganesan

For Respondent (in both WPs') : Mrs.S.Padmavathidevi, Special Government Pleader

COMMON ORDER

The revision orders under challenge in the above writ petitions are for the assessment years 2010-11 and 2011-12 passed on 30.07.2019 and 31.07.2019. The Enforcement Wing Officers of the respondent department conducted a surprise inspection at the business premises of the petitioner / dealer on 10.12.2014 and found purchase omission of Rs.54,75,982/- for the assessment year 2010-2011; Rs.22,42,643/- upto 11.07.2011; and Rs.68,18,036/- from 12.07.2011 to 31.03.2012. Pursuant to the same, revision notice was issued on 25.04.2019 proposing revision of assessment and objections were called for from the dealer and after the receipt of the replies, the turnover for the year 2010-2011 was redetermined at Rs.86,55,782/- taxable at 12.5% in addition with a penalty of Rs.16,01,164/-.

2. In so far as the assessment year 2011-2012 is concerned the turnover was re-determined at Rs.60,77,621/- taxable at 12.5% and 14.5% along with a penalty of Rs.12,08,184/-.

3. The crux of the issue revolves around the report of the Enforcement Wing and the enquiry conducted by the Assessment Officer. It was alleged that the purchases of cigarettes made from Valli and Sons were not accounted by the dealer and therefore, purchase omissions were made in the turnover. The dealer had requested for examination of the Seller namely Valli and Sons. During cross-examination of the Partner of Valli and Sons, would deposed that he could not produce any substantiating material to show that the goods were sold only to the petitioner and none else. It leads to an inference that Valli and Sons will make entries in the registers that they sold the goods to the dealers, even if any Tom, Dick and Harry purchased in the name of the dealer or in other words, goods sold to the retailers without TIN number, it was accounted in the registered dealers, in this case in the name of the petitioner. Unless, the seller substantiates with authenticated records that the petitioner purchased the goods and paid the price, the liability cannot be fastened on the petitioner. Curiously, the allegation is that the goods were purchased without bills. Eventhough the petitioner has raised these objections and pointed out the seller could not affirm with materials, it was sold to the petitioner, it was not considered by the respondent. The authority proceeded on the basis that the

seller has proved the cash purchase made by the petitioner. On the other hand, the fact remains that there are no substantiating materials to prove the same. In the absence of proof of purchase made by the petitioner, the purchase omissions attributed to the petitioner based on the inspection report cannot be sustained.

4. The respondent has not discussed the issue of the lack of evidence, but held that the report of the Enforcement Wing is unassailable. Such an approach, without evidence of purchase omission, leads this court to infer that the order passed by the authority is perverse and illegal. Therefore, the revised assessment made by the respondent in TIN No.33283941678/2010-2011 dated 30.07.2019 and in TIN No. 33283941678/2011-2012 dated 31.07.2019 are set aside as not sustainable in the eyes of law.

5. In fine, both the writ petitions stand allowed. The respondent is directed to refund the amount, if any, collected under revised assessment orders, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

6. The Special Government Pleader is entitled to separate fee for individual writ petitions.

Sd/-

Assistant Registrar(Recprds)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj/tk

To

The State Tax Officer,
Kumbakonam (Town) Assessment Circle,
Kumbakonam.

+1 CC to M/s.R.D. GANESAN, Advocate (SR-91033[F] dated 03/10/2019

W.P.(MD)NOS.17497 AND 17498 OF 2019
AND WPMP (MD) NOS.13975 AND 13977 OF 2019
01.10.2019
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