BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.08.2019
CORAM
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P(MD)Nos.9130, 9131, 9132 & 9133 of 2015
and
M.P.(MD)Nos.1, 1, 1 & 1 of 2015

Tvl.A.R.A.S.Enterprises (P) Limited,
Rep. by its Director K.Suresh,
No.35/1, Samayanallur Main Road,
Vilangudi, Madurai. ... Petitioner in all W.Ps'

Vs.

The Assistant Commissioner (CT),
West Veli Street Assessment Circle,
Madurai. ... Respondent in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the respondent in Asst. Nos.33724982149/2009-10, 2010-11, 2011-12 and 2012-13 respectively and quash the order dated 30.04.2015 as it is unlawful and in violation of the principles of natural justice and further direct the respondent to consider the objections in all perspective on its merits in terms of the decision of this Court reported in 9 VST 478.

For Petitioner (in all W.Ps') : Mr.R.D.Ganesan
For Respondent (in all W.Ps') : Mrs.J.Padmavathy Devi, Special Government Pleader.

COMMON ORDER

These Writ Petitions assail four orders of assessment passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2009-10, 2010-11, 2011-12 and 2012-13.

2.Heard detailed submissions of Mr.R.D.Ganesan, learned counsel for the petitioner and Mrs.J.Padmavathy Devi, learned Special Government Pleader for the respondent.

3.The assessments are assailed on various grounds. However, the main ground argued is that the detailed objections filed by the petitioner on 17.11.2014 and 21.01.2015, both filed along with voluminous annexures, have not been considered by the Assessing Officer.

4.At the outset, it is to be stated that both the aforesaid objections as well as annexures are admittedly part of the records of the Assessing Officer. Learned Special Government Pleader for the respondent has been specifically required to confirm this position and on instructions, she confirms that the compilation of materials filed by the petitioner along with the writ petitions as well as on 05.08.2019 (barring documents at serial Nos.2, 3 and 4) form part of the original assessment records.

5.Five issues arise in common across the four assessments.

6.The first issue relates to reversal of Income Tax Credit (in short 'ITC') on an alleged mismatch as per the annexures to the petitioners' returns and the data culled from the website of the commercial taxes department in relation to other dealers' returns.

7.The petitioner has specifically sought copies of the web-reports as well as the details of such alleged differences. It has also filed primary details in support of its claim of ITC such as purchase bills and ledger accounts. Inspite of this, and without furnishing the details sought for by the petitioner) the Assessing Officer has proceeded to confirm the proposal for reversal of ITC.

8.This Court, in the case of *Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) and another* [(2013) 60 VST 283] has considered almost similar facts, concluding that the reversal of ITC in circumstances where the petitioner has discharged its primary responsibility in regard to the claim of ITC in relation to a transaction is incorrect. The addition made in that case were quashed.

9.I may gainfully refer to the provisions of Rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007 (in short 'Rules') that read as follows:

'10.(2) Every registered dealer who claims input tax credit under sub-Section (1) of Section 19 shall, produce the original tax invoice, in support of his claim of the input tax credit, containing the following details, namely:

a) A consecutive serial number;

b) The date on which the invoice is issued;

c) The name, address and the taxpayer identification number of the seller;

d) The name, address and the taxpayer identification number of the buyer;

e) The description of the goods;

f) The quality or volume of the goods;

g) The value of the goods;

h) The rate and amount of tax charged; and

i) The total value of the goods'.

10.In the present case, there is no dispute with the position that the primary details in support of the petitioners' claim of ITC as required under Rule 10(2) of the Rules, have been produced by the petitioner and are part of the record. In such a situation, there is no justification for the Assessing Authority, to have arbitrarily reversed the claim of ITC. No doubt, the Assessing Officer is empowered to reverse a claim of ITC, but only if he is in a position to establish that the claim was incorrect. Documents and other materials that he refers to or utilizes in support of his stand should be supplied to the Assessee for rebuttal / response. In the present case, the reversal of the claim of ITC is based on materials allegedly collected from the departmental website that have, admitted nor been supplied to the petitioner despite its requests. It has thus been denied an opportunity to peruse or rebut the same. In such circumstances, the addition made on this score is set aside and the issue is remitted to the file of the Assessing Officer to be redone afresh after providing all material sought to be relied upon to the petitioner, and affording it an opportunity of personal hearing.

11.The second issue relates to an alleged difference between the purchase turnover in the monthly returns filed by the petitioner and its profit and loss accounts. This difference, according to the petitioner arises on account of freight charges as well as discounts received from the suppliers. The petitioner has placed, for the perusal of the Assessing Authority, the details of such freight charges as well as discounts at pages 15 to 24 of the compilation of papers. Though the proposal on this account has been confirmed, there is nothing in the operative portion of the order of Assessment to indicate that the material supplied by the assessee has been perused or analysed in proper perspective. I am thus constrained to remit this issue as well to the file of the Assessing Officer for consideration in the light of the materials already available on record.

12.The third issue relates to certain incomes received by the assessee in relation to its operations with AMWAY. The petitioner states that it has entered into an agreement between AMWAY India Enterprises dated 24.04.2008 for provision of warehouse and storage facilities in consideration of which it receives income. This income, according to it, would not constitute 'turnover' liable to be brought to tax under the provisions of the Act.

13.There are no findings whatsoever in relation to this issue in the context of the material filed by the assessee or its submissions, that find place in the impugned order. I thus remit this issue as well to the file of the Assessing Officer for consideration in the light of the materials already available on record as well as the additional evidences produced before this Court at serial Nos.2, 3 and 4 of compilation dated 05.08.2019. The learned Special Government Pleader does not, fairly, object to the consideration of additional evidence by the officer seeing as the documents constitute amendments to the service agreement already on record.

14.The fourth issue relates to the addition of estimated turnover towards deletion of assets as condemned articles. The petitioner states that though written off, the assets continued to be reflected as idle stock in the balance sheet of the company for the relevant periods. It was the petitioners' case that the condemned assets remained in its possession till they were sold on 19.01.2015. An invoice to this effect has been placed at page No.102 of the typed set of papers in W.P(MD)No.9130 of 2015. The petitioner also confirms that such turnover has been offered to tax as turnover in its returns for the period 2014-15. This position has also not been taken into consideration by the Assessing Authority, who simply estimates the turnover on the assumption that the assets have been sold in the relevant periods, despite specific assertions of the petitioner to the contrary.

15.This issue is also set aside and remitted to the file of the Assessing Officer. He is required to consider whether the invoice dated 19.01.2015 has taken into account the turnover from all assets that have been dealt in the four assessment periods in question and thereafter delete the addition, after recording a finding as aforesaid.

16.A perusal of the impugned order indicates patently that the Assessing Authority has not applied his mind to the materials furnished by the petitioner and as such, the orders of Assessment are vitiated by lack of application of mind and lack of consideration of relevant particulars that form part of records of the Assessing Officer. Thus, all orders of assessment are set aside. The levy of penalty in the respective years is also consequently set aside.

17.The petitioner will appear before the Assessing Authority on 04.09.2019 at 10.30 a.m., along with all materials in support of its stand in respect of the four issues as discussed above. No further notice need be issued in this regard. The authority shall, after hearing the petitioner and considering the materials placed before him, pass a speaking order within a period of six weeks after conclusion of personal hearing.

18.These Writ Petitions are disposed of in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner (CT),
West Veli Street Assessment Circle,
Madurai.

+4 CC to Mr.R.D. GANESAN, Advocate SR Nos-82536,82537,82539,82538

W.P(MD)Nos.9130, 9131,9132 & 9133 of 2015
20.08.2019

ps
MK (16.09.2019) 5P 6C