BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.08.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD).No.8074 of 2020
and
W.M.P.(MD).No.7493 of 2020

M/s.Sensons Lever Industries India (P) Limited,
Represented by its Managing Director Mr.S.Muthukumarasmy,
Unit-II: Survey No.346/2, Thuraiyur Main Road,
Thiruvellarai Village, Manachanallur Taluk,
Thiruchirappalli District. ...Petitioner

Vs.

State Tax Officer,
Demand Collection Cell,
Office of the Deputy Commissioner(ST),
Intelligence, Trichy. ...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in GSTIN:33AAYCS1246D1ZB/2019-2020 dated 12.03.2020 and quash the order dated 12.03.2020 as it is unlawful and in violation of the principles of natural justice and further direct the respondent to consider the objection letter dated 16.01.2020 along with all the relevant records filed by the petitioner in all perspective on its merits in terms of the decisions of this Hon'ble Court reported in 146 STC Page No.642, 9 VST Page No.478 & WP(MD).No.20023 of 2014.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

2. The learned Special Government Pleader submitted that the Writ Petition is liable to be dismissed because of the availability of alternative remedy of appeal.

3. The petitioner's counsel submitted that certain fundamental defects are on the face of it noticeable and that therefore, this Court will be justified in examining the correctness of the impugned order. In order to carry out this exercise, this Court wanted to put the petitioner on terms. The petitioner's counsel on instructions states that without prejudice to their contentions, the petitioner would remit a sum of Rs.5,00,000/- to the Department,

within a period of three weeks from the date of receipt of a copy of this order. This undertaking is recorded. Since such an undertaking was given by the petitioner, this Court proceeded to consider the contentions urged by the learned counsel appearing for the petitioner. The petitioner is engaged in manufacturing tobacco products. This subject matter pertains to the assessment year 2019-2020. The petitioner suffered the impugned order dated 12.03.2020, whereby, the petitioner has been called upon to pay certain sum of money. The said order is challenged by the petitioner principally on two grounds. The first ground is that the respondent has assumed that certain remittances in the bank account of the petitioner represents income from sale transactions. According to the petitioner, since the petitioner's Company was recently started in order to infuse capital, the Directors advanced personal loans to the Company. The petitioner's counsel submits that the petitioner had produced a certificate of the Chartered Accountant in support of their contention. The grievance of the petitioner is that without properly considering the same, the respondent had proceeded in the matter on pure surmises.

4. Though the learned Special Government Pleader would make a valiant attempt to sustain this part of the impugned order, I am afraid that the judgment of the Hon'ble Supreme Court is directly on the point. The Hon'ble Supreme Court in the decision reported in ***(1977) 39 STC 30-(Girdhari Lal Nannelal Vs. Sales Tax Commissioner, Madhyapradesh)*** held that even if the assessee is unable to adduce satisfactory material to show the source of remittances in the bank accout that would not, in the absence of anything more, would lead to the inference that the said sum represents the income of the assessee accruing from undisclosed sale transactions.

5. In the case on hand, the respondent after finding the petitioner's explanation to be unsatisfactory had straight away assumed that the said sum represents income from undisclosed sale transactions. I am afraid that this approach is clearly not sustainable in law. In fact when the matter was taken up for hearing, the petitioner's counsel produced a copy of the certificate issued by the Indian Bank as well as the City Union Bank to show that the transactions in question are between the Directors of the Company and the assessee themselves.

6. The second aspect of the matter pertains to reliance on the stock details report dated 13.02.2020. In this case, personal hearing was held on 31.01.2020. It is quite possible that the petitioner themselves requested the Assessing Authority to conduct an inspection. In fact, on the last occasion when the Assessing Officer was also heard through the Video Conference, she strongly submitted that the report dated 13.02.2020 was obtained based on the inspection that was undertaken at the instance of the petitioner themselves. It may be so. But then as rightly contended by the

learned counsel appearing for the petitioner, when such report is relied upon and it is adverse to the petitioner's interest, a copy of the same ought to have been furnished to the assessee and their explanation or remarks should have been sought for in that regard. In this case, that has not been done. It is obvious that the Assessing Officer had relied on a report dated 13.02.2020 before passing the impugned order. But the said report was not made available to the petitioner herein. Therefore, on these two grounds, the order impugned in the Writ Petition stands quashed. The Writ Petition is allowed accordingly. The matter is remitted to the file of the second respondent and after the petitioner remits the sum of Rs.5,00,000/- as undertaken before this Court, the second respondent will issue a hearing notice to the petitioner. The petitioner's counsel fairly points out that a copy of the report has already been made available. It is for the petitioner to offer his explanation with reference to the said report dated 13.02.2020 in the personal hearing to be afforded again by the respondent. After hearing the petitioner, orders will be passed afresh in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer,
Demand Collection Cell,
Office of the Deputy Commissioner(ST),
Intelligence, Trichy.

+1 CC to SPL GP (SR-15308[F] dated 28/08/2020)
+1 CC to Mr.R.D. GANESAN, Advocate (SR-15341[F] dated 31/08/2020)

ORDER MADE IN
W.P.(MD).No.8074 of 2020
27.08.2020

VB (08.09.2020) 3P 4C