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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2021

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM
and
THE HON'BLE MRS.JUSTICE S.ANANTHI

W.A.(MD)Nos.910 to 913 of 2021
and C.M.P.(MD)Nos.4152, 4153, 4156 & 4157

M/s.V.R.Muthu & Bros.
Rep. By its Partner
No.443, Main Bazaar
Virudhunagar. ... Appellant in all W.As.

-Vs-

The State Tax Officer-1
Virudhunagar-I Assessment Circle
Virudhunagar. ... Respondent in all W.As.

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letter Patent against the order dated 04.03.2021, made in W.P.(MD)Nos.11991 to 11994 of 2018.

Prayer in WP(MD). 11991/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records of the respondent in his proceedings in TIN : 33645720460/2011-12 quash the pre-revision notice dated 11.05.2018 issued therein.

Prayer in WP(MD). 11992/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN: 33645720460 / 2012-13, quash the pre-revision notice dated 11/05/2018 issued therein .

Prayer in WP(MD). 11993/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN: 33645720460 / 2013-14, quash the pre-revision notice dated 11/05/2018 issued therein .

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Prayer in WP(MD). 11994/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records of the respondent in his proceedings in TIN : 33645720460/2014-15 quash the pre-revision notice dated 11.05.2018 issued therein.

For Appellant (In all W.As) : Mr.R.L.Ramani, Senior Counsel for Mr.S.Raja Jeya Chandra Paul

For Respondent (In all W.As) : Mrs.J.Padmavathi Devi, Special Government Pleader.

COMMON JUDGMENT

[Judgment of the Court was made by **T. S. SIVAGNANAM, J.,**]

Heard Mr.R.L.Ramani, Senior Counsel for Mr.S.Raja Jeya Chandra Paul, learned counsel appearing for the appellant in all the Writ Appeals and Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondent in all the Writ Appeals.

2. With the consent on either side, these Writ Appeals are taken up for final disposal.

3. The appellant is a registered dealer on the file of the respondent under the provisions of the 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity). The appellant had filed the Writ Petitions challenging the pre-revision notices issued by the respondent for the Assessment Years 2011-12 to 2014-15.

4. Principally, the challenge to the pre-revision notices thereon, on the ground that the respondent Assessing Officer failed to take note of the specific direction issued by the Commissioner of Commercial Taxes in Circular dated 04.11.2013, as to how the operation of Section 19(20) of the Act should be adopted. Secondly, in spite of specific direction issued by the Hon'ble Division Bench, in an earlier round of litigation filed by the appellant, wherein, they had challenged the vires of Section 19(20) of the Act in W.P.(MD)No.20118 of 2014, dated 01.02.2017, where, the Hon'ble Division Bench, following a decision of the Hon'ble Supreme Court in ***Jayam & CO. Vs. Assistant Commissioner [1996 VST 1 (SC)],*** held that the said statutory provision is valid prospectively and that the Assessing Officer should proceed based upon the Circular issued by the Commissioner dated 04.11.2013. Furthermore, the appellant contended that though there was another

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circular issued by the Principal Secretary, Commissioner of Commercial Taxes in Circular No.1/2009, dated 30.11.2009, the said Circular was withdrawn by the Commissioner in Circular No.29/2015, dated 11.08.2015, thereby emphasizing the need to follow the Circular instructions dated 04.11.2013.

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5. Further, the appellant contended that the Assessing Officer cannot mechanically follow the proposal given by the enforcement wing and there cannot be any average/ad-hoc reversal of input tax credit without examining the records. It appears that the appellant had demonstrated the learned Writ Court that the proposal in the pre-revision notices for ad-hoc reversal is without any basis, as the sale price was never lower than the purchase price except for one item, viz., Sweetened Gingelly Seed, which is also a very negotiable amount and in all other cases, invariably price is much higher than the purchase price. The department appears to have restrained the prayer contending that the pre-revision notices cannot be put to challenge and the appellant should submit their objections.

6. On a reading of the impugned orders passed in the Writ Petitions, we find that the substantial portion of the contention advanced by the appellants were accepted and found favour with the learned Writ Court. However, ultimately, the learned Writ Court sustained the objection raised by the learned Additional Government Pleader and directed the assessee to submit their objections, after the Assessing Officer issued a supplemental show cause notice. The correctness of this direction is called in question before us.

7. Firstly, we need to point out that the proposal given by the Enforcement Wing is not binding on the Assessing Officer, as he is an independent authority, who has to complete the assessment based on the books of accounts and the returns filed after opportunity to the assessee. In the event, the assessee does not co-operate, it would be well open to the Assessing Officer to complete the assessment on best of judgment basis.

8. In the instant case, the pre-revision notices were triggered on account of the inspection conducted by the Enforcement Wing. As pointed out by the learned Writ Court, this can be at best cause of action to reopen the assessment by invoking power under Section 27 of the Act, but while issuing pre-revision notices, assessee cannot straightaway make a proposal for ad-hoc reversal of the input tax credit, when the appellant assessee would state that they have got sufficient records to prove that no such reversal can be done, much less ad-hoc reversal on input tax credit. Therefore, the appropriate procedure that should have been followed by the respondent Assessing Officer, on

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receipt of the proposal by the enforcement wing, is to issue a notice to the assessee to produce all records to examine as to whether there has been any huge accumulation of input tax credit on account of lesser sale price than purchase price. This required to be mandatorily done by the Assessing Officer in the light of the Circular dated 04.11.2013. The circular instructions cannot bind the assessee, but it binds the Assessing Officer, who is the subordinate authority in the hierarchy of authority in the Commercial Tax Department. Therefore, the pre-revision notices straightaway proposing the ad-hoc reversal is not sustainable in law.

9. For the above reasons, these Writ Appeals are allowed. The orders passed in the Writ Petitions are set aside. Consequently, the pre-revision notices are set aside and these matters are remanded to the respondent. The respondent is directed to issue a show cause notice to the appellant directing them to produce all their books of accounts and other records to examine them in the light of the direction issued in the Circular, dated 04.11.2013 and ascertain as to whether there is any accumulation of input tax credit on account of lesser sale price than the purchase price. On perusal of the records and books of accounts and other documents, the Assessing Officer shall form a *prima facie* opinion and thereafter, issue revision notice, cause sufficient opportunity to the appellant to submit their objections and thereafter, after affording an opportunity of personal hearing, complete the assessment. In the event, the assessing officer is satisfied on perusal of the records produced by the assessee before them by examining it in terms of the Circular issued by the Commissioner, then, it is well open to the Assessing Officer to complete the assessment based on such records and discussions with the assessee. The above direction be complied with by the respondent within four weeks from the date of receipt of a copy of this judgment.

10. These Writ Appeals are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The State Tax Officer-1
Virudhunagar-I Assessment Circle
Virudhunagar.

+1 CC to MR.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-17852[F] dated 28/04/2021)

+1 CC to SPL GP (SR-18301[F] dated 30/04/2021)

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