BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.11991, 11992, 11993 and 11994 of 2018
and
W.M.P.(MD)Nos.10949, 10950, 10951 and 10952 of 2018

M/s.V.R.Muthu & Bros,
Represented by its Partner,
443, Main Bazaar,
Virudhunagar. ... Petitioner in all W.Ps

Vs.

The Sales Tax Officer-I,
Virudhunagar. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the case of the respondent in his proceedings in TIN:33645720460/2011-12, 2012-13, 2013-14 and 2014-15 quash the pre-revision notice dated 11.05.2018 issued therein.

(In all W.Ps)

For Petitioner : Mr.R.L.Ramani, Senior Counsel,
For Mr.S.Raja Jeya Chandra Paul.

For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader.

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner/M/s.V.R.Muthu and Bros, have filed these four writ petitions for the assessment years 2011-12 to 2014-15. The case of the respondent is that the Enforcement Wing Officials inspected the petitioner's place of business and apparently found that the petitioner had been selling goods by offering quantity discount to their customers ultimately resulting in sale price being lessor than their purchase price. Therefore, they proposed to reverse the input tax credit to the tune of 15%. Based on the proposal given by the Enforcement Wing, the respondent issued the impugned pre-revision notices. The same are under challenge in these writ petitions.

3.The learned senior counsel for the petitioner submitted that the impugned pre-revision notices are not in consonance with the circular dated 04.11.2013 issued by the Commissioner of Commercial Taxes. He pointed out that this circular was considered in W.A.Nos.1038 to 1040 of 2015 by order dated 05.08.2015, the Hon'ble Division Bench held as follows:-

> *"7. Section 19(20), which was introduced with effect from 19.8.2010, but which was later given retrospective effect from 1.1.2007, according to the circular of the Commissioner, indicates three steps in-built within the same for operation of the same. These three steps are as follows :*
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> *"1. Identification of cases in which huge ITC is accumulated on account of lesser sale price than the purchase price.*
> *2. The above facts have to be ensured by verifying the purchase and sale price per unit.*
> *3. If the above two things are found in a business concern, the quantum of ITC which exceeds the output tax shall be reversed.""*

4.When this Court wanted to know the basis on which the pre-revision notices have been issued, Mr.Kumaresen, the present Commercial Tax Officer, Virudhungar read out from the statement given by the petitioner herein before the enforcement wing officials during inspection. While such a statement may not be binding on the petitioner herein, that can certainly furnish cause of action for initiating proceedings under Section 27 of the Tamil Nadu Value Added Tax Act. But then, as rightly pointed out by the learned senior counsel for the writ petitioner, details are absent. When the pre-revision notice does not contain the relevant particulars, it would be difficult for the assessee to appropriately respond. However, there is considerable merit in the stand of the respondent that at the stage of show cause notice, the Writ Court should be highly reluctant to interfere. Therefore, even while declining to interfere with the impugned notices, I direct the respondent to issue a supplemental notice enclosing the relevant particulars. The petitioner has to necessarily offer his explanation in time without entangling the respondent in further litigation. The respondent will consider the objections of the petitioner in the light of the aforesaid circular dated 04.11.2013 and the relevant provisions of law. If the respondent is not satisfied, personal hearing will be granted and thereafter, orders in accordance with law will be passed.

5.These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Sales Tax Officer-I,
Virudhunagar.

+1 CC to M/s.SPL GP (SR-9207[F] dated 05/03/2021)

W.P(MD)Nos.11991, 11992, 11993 and 11994 of 2018
04.03.2021

VR(CO)
TR(23.03.2021) 3P 3C