BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.4716 of 2017
and
W.M.P.(MD)No.3770 of 2017

M/s.Malaysia Corporation,
Rep. by its Proprietor,
M.Mohammed Ali,
No.3, Thirumayam Kadaiveedhi,
Thirumayam,
Pudukkottai District. ... Petitioner

-Vs-

The Commercial Tax Officer-Main,
Pudukkottai-II Assessment Circle,
CT Buildings, Pudukottai.
... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33444121719/2013-14, dated 09.01.2017 and quash the same as illegal, arbitrary, against the provisions of the Act and also against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is a dealer doing retail business of cement and other items. He registered himself with the respondent. The case on hand pertains to the assessment year 2013-14. The petitioner filed his monthly returns in Form-I and the assessment was deemed to have been finalised under Section 22(2) of the TNVAT Act, 2006. Since the petitioner's turnover crossed rupees one crore, he also filed an audit report in Form-WW. While so, the respondent issued pre-revision notice dated 25.10.2016. The notice came to be issued following the scrutiny of Form-WW report filed by the petitioner herein. It was seen that the purchase turnover as well as the sales turnover was more or less equal. The authority also noticed that the petitioner had received discount towards the sales of the cement. Thereupon, the ITC corresponding to the discount received was proposed to be reversed. The entire notice rests on the remarks of the audit wing. To this notice, the petitioner gave his reply dated 16.12.2016. The stand of the petitioner was that the discount received by the petitioner ought not to have been included in the turnover. The petitioner relied on the statutory provisions in support of his contentions. The petitioner's counsel pointed out that the petitioner did not sell the commodities purchased by him at any lesser price. He also would contend that as a result of receiving the discount, the tax component was in no way disturbed. The petitioner submitted his objections and the impugned order dated 09.01.2017 came to be passed. Challenging the same, the writ petition has been filed.

3.The respondent has filed a counter opposing the writ prayer. The learned Government Advocate took me through the averments set out therein and wanted me to sustain the order impugned in the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. The impugned order is vulnerable on atleast three counts.

(a) the respondent has straight away passed the impugned order after receiving the objections from the petitioner. Personal hearing was not given. It has been held time and again that affording an opportunity of personal hearing is mandatory. In this case, this requirement has not been complied with.

(b) the petitioner has given certain reasons controverting the stand of the assessing authority. But in the impugned order, those reasons have been cursorily overruled. I have no doubt in my mind that the impugned order is non speaking in nature. On this sole ground, the impugned order is to go.

(c) The most important and substantive contention is anchored on the provisions of the Act as well as the circular dated 04.11.2013 issued by the Commissioner, Commercial Taxes, Chennai. The said circular came to be applied by the Hon'ble Division Bench of this Court in W.A.Nos.1038 & 1040 of 2015, dated 05.08.2015. The Hon'ble Division Bench in the said order held as follows:-

> "6.Reliance is placed upon a circular issued by the Commissioner of Commercial Taxes on 04.11.2013. The said circular is on the scope of interpretation of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006.
>
> 7.Section 19(20), which was introduced with effect from 19.08.2010, but which was later given retrospective effect from 01.01.2007, 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:-
>
> "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.

8.Therefore, based upon the orders passed by the High Court on 17.07.2013 in a batch of Writ Petitions upholding the constitutional validity of Section 19(20) and also based upon the representations of the association of manufacturers and traders, the Commissioner has directed in his circular that the provisions of Section 19(20) have nothing to do with the levy of tax on the discount, which has to be dealt with independently as per the provisions of the Act”

5.The assessing authority has not at all taken note of the aforesaid legal position, while passing the impugned order. Therefore, on these three counts, the order impugned in the writ petition is quashed. The Writ Petition is allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

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 Commercial Tax Officer-Main,
Pudukkottai-II Assessment Circle,
CT Buildings, Pudukottai.

+1 CC to M/s.K.SOUNDARARAJAN, Advocate (SR-8572[F] dated 03/03/2021)

W.P.(MD)No.4716 of 2017
01.03.2021

tp(CO)
KK(12.03.2021) 3P 3C