BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.23512 & 23517 of 2019
and
W.M.P.(MD)Nos.20140 & 20142 of 2019

Tvl.Maruthi Poly Bags(P) Ltd.,
rep. by its Managing Director N.Renganathan,
No.10C & 11C, SIPCOT Complex,
Pudukkottai-622002. ... Petitioner in both W.Ps.

-Vs-

The Assistant Commissioner (CT)(FAC),
Pudukkottai-1 Assessment Circle,
Pudukkottai. ... Respondent in both W.Ps.

Prayer in W.P.(MD)No.23512 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN: 33844101032/2007-08, dated 16.08.2019 and quash the same as illegal, invalid and against the principles of natural justice.

Prayer in W.P.(MD)No.23517 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN: 33844101032/2008-09, dated 16.08.2019 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.G.Arjunan
(in both W.Ps.) Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the respondent. The case on hand pertains to the assessment years 2007-08 & 2008-09. The petitioner's assessment was finalised on deemed assessment basis. Subsequently, surprise inspection was conducted in the petitioner's place of business on various dates in March 2015 by a team of Enforcement Wing Officials. Thereafter, pre-revision notices were issued and after hearing the petitioner, the impugned orders came to be filed.

3.The core argument of the petitioner's counsel is that the respondent did not conduct any independent enquiry in the matter.

The respondent has chosen to go-by entirely by the proceedings of the Central Excise Department. This submission has considerable force. But then, one factor may go against the petitioner. The proceedings initiated by the respondent alleged both the sales suppression as well as the purchase suppression on the part of the petitioner. The petitioner originally filed an appeal before the Tribunal(CESTAT). During its pendency, Samathan Scheme was introduced and the petitioner had settled the issue with the Central Excise Department.

4.If, according to the petitioner, there was no sales suppression, the petitioner could have as well sought full fledged judicial adjudication of the said issue. The fact that he has chosen to go under the amnesty scheme indicates that all was not well with the maintenance of the petitioner's account as far as the sales transactions are concerned. Be that as it may, I do not want to conclude the issue, merely because, the petitioner got the issue resolved through Samathan Scheme. The case on hand as regards the sales suppression stands foreclosed. The petitioner has to be necessarily put on terms.

5.In the impugned orders, the petitioner's liability as regards the sales suppression was quantified approximately Rs.7,00,000/-. Without prejudice to his contention, the petitioner is directed pay the said amount to the respondent on or before 31.03.2021. The petitioner gives an undertaking that he would do so without seeking any extension of time. The said remittance shall abide by the final order to be passed by the respondent following this remand. Of-course, it is seen that the respondent had chosen to infer that there must have been corresponding purchase suppression also. For purchase suppression, on the face of it, there are no materials.

6. It is for this reason that I am constrained to interfere. The orders impugned in the writ petitions are quashed. The Writ Petitions are allowed. The matters are remitted to the file of the respondent to pass orders afresh in accordance with law. All the contentions of the petitioner are left open. However, this remand order has been passed by recording the petitioner's undertaking to pay a sum of Rs.7,00,000/- towards the impugned demand without prejudice to his contention. If the petitioner fails to adhere to his undertaking, the order now passed will stand automatically recalled and the Writ Petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Assistant Commissioner (CT)(FAC),
Pudukkottai-1 Assessment Circle,
Pudukkottai.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-11288[F] dated 16/03/2021)

W.P.(MD)Nos.23512 & 23517 of 2019
and
W.M.P.(MD)Nos.20140 & 20142 of 2019
15.03.2021

ES(CO)
KB(29.04.2021) 3P 3C