BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)Nos.7982, 7983 and 7984 of 2016
and
W.M.P.(MD)Nos.6533, 6534 and 6535 of 2016

TV Sundram Iyengar & Sons Limited,
(Now Known as TV Sundram Iyengar &
Sons Private Limited),
Represented by its Chief Financial Officer,
S.Santhana Gopalan,
7-B, West Veli Street,
Madurai. ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (CT),
West Veli Street Assessment Circle,
Madurai. ... 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 on the file of the respondent herein in TIN:33595020002/2009-10, 2010-11 and 2012-13 dated 07.04.2016, quashing the same.

(In all W.Ps)
For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.G.Arjunan,
Government Advocate.

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2.M/s.TV Sundram Iyengar & Sons Limited have filed these three writ petitions for the assessment years 2009-10, 2010-11 and 2012-13. The petitioner had earlier approached this Court in respect of the orders passed by the respondent for the assessment years 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 by filing W.P.(MD) Nos.17642 to 17646 of 2013. Vide order dated 29.10.2013, the orders impugned therein were set aside and the writ petitions were allowed and the respondent was directed to afford reasonable opportunity to the petitioner herein. Following the said remand, the respondent issued notices dated 12.02.2015 proposing reversal of input tax credit as per Section 19(5)(c) and 19(4) of the Act. The petitioner submitted their objections in response to the said notices. Thereafter, the impugned orders were passed reversing the input tax credit for the assessment years 2009-10 and 2010-11 and levying tax for the assessment year 2012-13. Penalty was levied in respect of the assessment year 2012-13. Challenging the same, these writ petitions have been filed.

3.The learned counsel for the petitioner raised very many grounds. He would point out that vide notice dated 01.04.2013, the then assessing authority noted that sales returns were wrongly reported as Rs.48,12,492/- for the month of February 2011, and therefore, permitted the petitioner to adjust the excess payment for the month of March, 2013. However, in the impugned order, the respondent had proceed on the footing that intimation dated 01.04.2013 is not valid and admissible for the said assessment year namely, 2012-13. The petitioner's counsel would point out that the stand taken by the assessing authority cannot be disregarded or discarded by the succeeding officer. There is nothing on record to show that the communication dated 01.04.2013 was set aside by the revisional authority. His second contention is that the respondent has not appreciated the distinction between goods that stand exempted from levy of tax and transactions that stood exempted from levy of tax. In the case on hand, the petitioner had supplied goods to canteen stores and those transactions are exempted from levy of tax. He would also point out that the petitioner has not even claimed any input tax credit on those transactions but the authority had chosen to effect reversal of input tax credit. The petitioner's counsel would also point out that when the assessee has not availed input tax credit, the question of reversal does not arise at all. His yet another contention is that the authority was utterly wrong in levying penalty on the assessee for the assessment year 2012-13. This was because, all the particulars of transactions were culled out by the assessing authority from the returns filed by the assessee themselves. There was no question of suppression of any transaction. Levy of penalty has a quasi criminal flavour. Therefore unless *mens rea* can be demonstrated, the authority cannot mechanically impose penalty. In this regard, he also relied on a host of decisions.

4.Even though all these contentions deserve to be individually dealt with and considered by this Court, I am of the view that the impugned orders deserve to be quashed on a short ground. When this Court allowed the petitioner's earlier writ petitions on 21.10.2013, the matters were remanded with a specific direction to the authority to give reasonable opportunity to the petitioner. These orders were passed under Section 27 of the Tamil Nadu Value Added Tax Act. The said provision contemplates grant of personal hearing to the petitioner. In the affidavit filed in support of the writ petition, it has been specifically pleaded that personal hearing was not given to the petitioner herein. In the counter affidavit, the authority would take the stand that since the petitioner have not lodged their objections, there was no question of granting personal hearing to the petitioner. This stand of the authority cannot be accepted. The Hon'ble Division Bench of this Court in G.V.Cotton Mills (P) Ltd., Vs. Assistant Commissioner (CT), Avarampalayam Assessment Circle, Coimbatore had held that even reply is not filed, still personal hearing will have to be granted. In fact, in the case on hand, the petitioner had filed their objections. Therefore, on the ground of failure to grant of personal hearing to the petitioner, the orders impugned in these writ petitions are quashed. The matters are remitted to the file of the respondent to pass orders afresh in accordance with law. I make it clear that the respondent will have to issue a fresh personal hearing notice to the petitioner in respect of all the three assessment years. The respondent while passing orders will have to consider each and every contention that may be raised by the assessee.

5.With these directions, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ias

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),
West Veli Street Assessment Circle,
Madurai.

+3 CC to M/s.N.INBARAJAN, Advocate (SR-9638[F]9636,9637 dated 09/03/2021)

+1 CC to M/s.SPL GP (SR-9693[F] dated 09/03/2021)

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MJ(CO)
KB(23.04.2021) 3P 6C