(2015) 07 MAD CK 0336

In the Madras High Court

Case No : Writ Petition Nos. 19595 to 19601 of 2015 and M.P. Nos. 1 of 2015

GBR Metals Pvt. Ltd. APPELLANT

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 22(2), 64

Citation : (2015) 07 MAD CK 0336

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : T. Pramodkumar Chopda, for the Appellant; S. Kanmani Annamalai, Additional Government Pleader, Advocates for the Respondent

Judgement

T. Raja, J—Heard Mr. Pramodkumar Chopda, learned counsel for the petitioner and Mr. S. Kanmani Annamalai, learned Government Advocate (Taxes), who took notice for the respondent and with their consent, the Writ Petitions are taken up for final disposal.

2. There are seven writ petitions filed by M/s. GBR Metals Pvt. Ltd., represented by its Director Mahabir Prasad Periwal, challenging the seven assessment orders dated 29.05.2015 passed by the Assistant Commissioner(CT), Peddunaickenpet Assessment Circle, with respect to assessment years 2007-08 to 2013-14 respectively.

3.1 Learned counsel for the petitioner would submit that when the petitioner Company filed their monthly returns both under the Tamil Nadu Value Added Tax Act, 2006 and CST Act, 1956 for the assessment years 2007-08 to 2013-14, disclosing all their purchases, sales including consignment transfer made during the relevant year, it goes without saying that as per Section 22(2) read with its proviso, the original assessment orders are deemed to have been passed based on the monthly returns. When the matter stood above, on 07.11.2013, the place of business of the petitioner Company was inspected by the Enforcement Wing Officers for the purpose of VAT Audit under Section 64 of the Act. Subsequently, a statement was prepared by the Enforcement Officer, which was signed, subject to the following endorsement:

"I am disagree (ing) the above statement".

Learned counsel for the petitioner would further submit that the petitioner filed their explanation to the statement furnishing and clarifying the averments recorded by the Enforcement Officials in respect of the defects pointed out therein. However, the respondent issued notices dated 27.01.2015 for all the assessment years in question, based on the D3 proposal received from the Enforcement Authority and thereupon they proposed to revise the assessment orders.

3.2 According to the learned counsel for the petitioner, in this background, the grievance of the petitioner is that the respondent issued notices dated 27.01.2015, raising various defects with regard to the ineligible claim of ITC, by stating that on verification of genuineness of purchases with reference to annexure I of monthly returns in respect of the relevant assessment year in intranet "Cross verification of buyer and seller as per annexure I in respect of the relevant assessment year, it was noticed that the sellers have not reported the corresponding sales in annexure II in respect of the relevant assessment year and hence they are liable for tax for the respective assessment years. Emphasizing more on the defects raised by the respondent in the respective notices dated 27.01.2015, that the sellers have not reported the corresponding sales in annexure II in respect of the relevant assessment year, it is the contention of the learned counsel for the petitioner that when a specific letter was addressed to the respondent requesting furnishing of details with regard to the names and addresses of the sellers who have not reported the corresponding sales in Annexure II of the respective assessment years, till date, the Assessing Officer has not come forward to accede to the said request and hence, without furnishing the names of the sellers, who, according to the respondent have not reported the corresponding sales in Annexure II of the respective assessment years, it is not humanly possible for the petitioner to file a detailed reply for the respective assessment years.

3.3 In support of the contention that the petitioner has sought for specific information with regard to the names and other particulars of the sellers, the learned counsel for the petitioner has brought to the notice of this Court the letter dated 19.03.2015 of the petitioner which was submitted before the Assessing Officer thanking him for granting personal hearing in pursuance of their interim replies to the show cause notices for the assessment years 2007-08 to 2013-14, wherein the petitioner has specifically raised an issue that the respondent has not furnished the details of the records and verification relied upon in the revision notice as requested by the petitioner.

3.4 In short, the grievance of the petitioner as advanced by Mr. Pramodkumar Chopda, learned counsel for the petitioner is that the petitioner has not been furnished with some of the details which have been sought for from the various Annexures enclosed in the respective interim replies dated 27.02.2015 for the assessment years in question to assist the Assessing Officer to reach a fair decision on the issue. It was contended that the Assessing Officer having taken a stand in his respective notices dated 27.01.2015 that on cross verification of the buyer and seller as per Annexure I in respect of the relevant assessment year, it was noticed that the sellers have not reported the corresponding sales in annexure II in respect of the relevant assessment year, in all fairness, the details sought viz., the particulars regarding the names and address of the sellers and the purchase particulars could have been given to the petitioner to give a quietus to the issue. As the same has not been done, the impugned orders, are liable to be quashed.

3.5 Further, the learned counsel submitted that even if the petitioner goes before the appellate authority, he will be handicapped to assail the infirmities committed by the Assessing Officer for the reason the particulars with regard to the sellers have not been furnished. That apart, it may not be possible for the petitioner to move any application whatsoever before the appellate authority for furnishing of such particulars, which were not furnished by the Assessing Officer.

3.6 Adding further, the learned counsel for the petitioner would submit that even a reading of the respective impugned orders clearly shows that the respondent has not adverted with regard to the names and other particulars of the sellers on his own. Therefore, there will not be any legal embargo to direct the Assessing Officer to have a re-look into the matters by giving a direction to furnish first the particulars as sought for by the petitioner in their letter dated 19.03.2015 viz., the particulars with regard to the sellers mentioned in the respective notices dated 27.01.2015.

3.7 Concluding his argument, learned counsel for the petitioner would further submit that after furnishing the above referred particulars as sought for by the petitioner, the respondent should be directed to consider the matters afresh independently and that would meet the ends of justice.

4. Per contra, Mr. S. Kanmani Annamalai, learned Additional Government Pleader (Taxes) submitted that when the petitioner has transacted business with his own sellers, who are shown in the respective Annexure II of the assessment years in question, which were collected during inspection by the Enforcement Wing Officials in the premises of the petitioner Company, the petitioner cannot ask for the names and other particulars including the sales effected by the sellers.

5. But, this Court, finds some difficulty to agree with the said contention for the reason that the notices dated 27.01.2015 issued by the respondent which are proceeding on the basis that on cross verification of the buyer and seller as per the respective Annexure No. I, it was noticed that the sellers have not reported the corresponding sales in the respective Annexure No. II, shows that the names of the sellers have been found by the Assessing Officer. Therefore, when the

respondent was definite on the defect that has been put against the petitioner, in all fairness, it is for them to furnish all the details before passing the final orders.

6. In view of the above, this Court, without going into the merits of the matter, while setting aside the impugned orders passed by the respondent dated 29.05.2015, keeping in mind that there was inspection conducted by the Enforcement Wing Officials in the premises of the petitioner on 07.11.2013 for the purpose of VAT Audit, under Section 64 of the TNVAT Act, directs the Assistant Commissioner (CT), Peddunaickenpet Assessment Circle to furnish the names of the sellers given in the respective Annexures II of the respective assessment years to the petitioner. It is needless to mention that if the above said particulars are not available with the Assessing Officer, he is directed to make a request to the Enforcement Wing Officials who conducted surprise inspection on 07.11.2013 to provide all the information and after receiving such information, the same shall be furnished to the petitioner. The petitioner, on receipt of such information, thereafter within a period of three weeks, shall file a detailed reply for each of the assessment years and after receipt of such replies from the petitioner, it is for the Assessing Officer to pass detailed orders on merits, by applying his mind independently on all issues uninfluenced by the proposal of Enforcement Authority.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.