BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16037 of 2019 and
WMP(MD) Nos.12744 of 2019 & 8376 of 2020

M/s.T.V.Sundaram Iyengar & Sons Pvt Ltd,
Represented by its Senior GM(Indirect Taxes),
Mr.P.Venkatesh,
TVS Building,
7-B, West Veli Street,
Madurai – 625 001. Petitioner

Vs.

1.The Commissioner of CGST & Central Excise,
Central Revenue Buildings, GST Bhavan,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai- 625 002.

2.The Superintendent (ADJN),
Office of the Commissioner of Central Excise,
Customs & Service Tax,
Central Revenue Buildings, GST Bhavan,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai – 625 002.

3.The Superintendent,
Head Quarters Preventive Unit,
Central Revenue Buildings, GST Bhavan,
No.4, Lal Bahadur Shastri Marg, Bibikulam,
Madurai – 625 002. Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in File C.No.V/ST/15/30/2018-Adjn. comprising of letter dated 10.07.2019 on the file of the second respondent and quash the same as illegal, arbitrary and violative of principle of natural justice and for consequential direction directing the first respondent to furnish a copy of the Post Scrutiny Report as sought for by the petitioner through letter dated 08.07.2019.

For Petitioner : Mr.T.Ramesh for
Mr.S.P.Maharajan

For Respondents : Mr.B.Vijaykarthikeyan

ORDER

Heard the learned counsel for the Writ Petitioner and the learned Standing Counsel for the respondents.

2.The Writ Petitioner is an assessee registered with the first respondent. The first respondent issued show cause notice dated 28.08.2018, calling upon the writ petitioner to show cause as to why a sum of Rs.67,81,07,326/- should not be levied on them under Section 73(1) of Finance Act, 1994, together with interest and penalty. In response to the said show cause notice, the petitioner submitted their interim reply. The petitioner also contended that there are certain basic errors in the show cause notice and that it would be better, if a verification exercise is carried out. The petitioner took the stand that certain documents are to be provided by the respondents so that they could submit a consolidated reply to the show cause notice. Though the petitioner contends that the first respondent had directed them to go before the third respondent and place all the relevant materials, the learned Standing Counsel denies the same. But the third respondent had undertaken a verification exercise and also prepared a Scrutiny Report/Verification Report. The petitioner requested the first respondent to furnish them with a copy of the Scrutiny Report prepared by the third respondent, so that they can submit their final reply and also take part in the personal hearing. The first respondent however decided that the petitioner is not entitled to the said copy of the report and fixed the personal hearing on 29.07.2019. To this effect, communication dated 10.07.2019 was also issued to the petitioner. This is under challenge in this Writ Petition.

3.The respondents have filed a detailed counter affidavit. The learned Standing Counsel reiterated all the contentions set out in the counter affidavit. His basic contention is that all the documents referred to in the show cause notice were made available to the petitioner herein. According to him, the verification process undertaken by the third respondent is an integral part of the adjudication process. It would not be open to the petitioner to ask for a copy of the same. The learned standing counsel relied on the decision reported in *2016 (338) E.L.T.213 (Mad.) (Sheer Gold Pvt Ltd., Vs. Commissioner of Customs (AIR) Chennai,* wherein, the Honourable Division Bench held that the assessee cannot stall the adjudication proceedings on the ground that the relied-on documents have not been supplied as he can challenge the final order on the same ground after the adjudication order is passed.

4.I carefully considered the rival submissions and the materials on record.

5. I do appreciate sustain the contention of the learned standing counsel that the adjudication process cannot be stalled. But then, in the case on hand, the petitioner's demand is for the supply of a copy of the Scrutiny report prepared by the third respondent. It is admitted in the counter affidavit itself that verification exercise was undertaken. I posed a specific question to the learned Standing Counsel as to whether there is

such a report and whether the first respondent proposes to rely on the same. The answer is in the affirmative. I cannot agree with the contention of the learned Standing Counsel that the verification exercise undertaken by the third respondent is an integral part of the adjudication process. It cannot be. The first respondent is an independent adjudicating authority. He cannot delegate his adjudicating power to any one. It is true that the decision of the Honourable Division Bench appears to in favour of the Department. But then, in that case, demand for supply of relied-on documents was made at the show cause notice stage itself. The case on hand is having a different flavour. The Scrutiny report was prepared after the submission of interim reply to the show cause notice. If the report in question is not furnished to the petitioner and if an adverse order based on the said report is passed, then the adjudication would be set aside on that sole ground. Therefore, by furnishing a copy of the report, the department is not going to suffer any prejudice, on the other hand, it will avoid multiplicity of proceedings.

6.The order impugned in the writ petition is quashed. The writ petition is allowed. The first respondent is directed to make available the Scrutiny report submitted by the third respondent to the petitioner herin.

The petitioner's counsel on instructions said that within a period of four weeks thereafter, the petitioner would submit their final reply and the petitioner will also take part in the personal hearing, without asking for any further extention of time. I make it clear that the petitioner should co-operate with the entire adjudication process, so that it can be concluded as early as possible.

7. With the above direction, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

03.09.2020

Index : Yes / No
Internet : Yes/ No
vrn

Note:

1. Issue order copy on **14.09.2020**

2. 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:

1.The Commissioner of CGST & Central Excise,
Central Revenue Buildings, GST Bhavan,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai- 625 002.

2.The Superintendent (ADJN),
Office of the Commissioner of Central Excise,
Customs & Service Tax,
Central Revenue Buildings, GST Bhavan,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai – 625 002.

3.The Superintendent,
Head Quarters Preventive Unit,
Central Revenue Buildings, GST Bhavan,
No.4, Lal Bahadur Shastri Marg, Bibikulam,
Madurai – 625 002.

G.R.SWAMINATHAN,J.

vrn

W.P.(MD)No.16037 of 2019 and
WMP(MD) Nos.12744 of 2019 & 8376 of 2020

03.09.2020