

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2015

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.19912 to 19914 and
19503 to 19506 of 2015
and M.P.Nos.1 of 2015

Tvl. Jain Housing & Constructions Ltd. [Petitioner]
Rep. by Managing Director in all wps.
Mr. Sandeep Kumar Mehta
No.11, Somasundaram Street
T.Nagar Chennai-17
Now at M.R.C. Nagar Ch-28.

Vs

The Assistant Commissioner(CT)
Pondy Bazzar Assessment Circle
Greenways Salai, Chennai-28. [Respondent]
in all wps.

PRAYER: Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the files of the respondent proceedings in TIN/ 3331520924/2011-12, 2012-13, 2013-14, 2007-08, 2010-11, 2009-10 and 2008-09 respectively dated 29.05.15 and quash the same being illegal invalid without authority of law and violated the principles of natural justice and also law laid down by this Court.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader(Taxes)

C O M M O N O R D E R

Heard Mr.D.Vijayakumar, 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 challenging the seven assessment orders dated 29.05.15 passed by the Assistant Commissioner (CT), Pondy Bazzar Assessment Circle, with respect to assessment years 2011-12 to 2013-14, 2007-08, 2010-11, 2009-10 and 2008-09 respectively.

3. A reading of the impugned orders of assessment dated 29.05.2015 in TIN No.3331520924 shows that after proper examination of the proposal already communicated to the petitioner, the same has been confirmed on the merits of the records available with the respondent. The respondent, noticing the purchase omissions, giving a finding that there was willful evasion of tax, levied penalty being 100% of tax due in respect of each assessment years as per Section 27 (3) of the Tamil Nadu Value Added Tax, Act, 2006 (hereinafter referred to as the TANVAT Act). Further, the orders say that for the wrong claim of ITC for the respective assessment years, penalty at 100% of the wrong claim of ITC was levied as per Section 27(4) of the TNVAT Act. Challenging the same, the petitioner is before this Court.

4.1 The case of the petitioner in all the matters, as pleaded by the learned counsel for the petitioner is that the petitioner, being a dealer in building construction has been doing the business and from January 2007, they registered themselves under the TNVAT Act and submitting their monthly returns and paid the tax in accordance with law. They have reported the total and taxable turnover for all the assessment years. It is the contention of the petitioner that they, after adjusting input tax credit, paid the taxes for the respective assessment years.

4.2 Whilesso, according to the learned counsel for the petitioner, an inspection took place on 19.02.2014, which ended on 09.04.2014 in the petitioner's office premises. Since the inspection took place for about 50 days, the Enforcement Wing Officers also verified the books of accounts from the assessment year 2007-08 to 2013-14. During the said inspection, the petitioner has produced all the records to the inspecting officers.

4.3 Subsequently, when notices were issued on 20.02.2015 for the assessment years 2007-08 to 2013-14 both under the TNVAT Act and CST Act, proposing to impose tax and penalty, based on the inspection report conducted from 19.02.2014 to 09.04.2014, according to the learned counsel for the petitioner, the petitioner requested the respondent to grant 45 days time through their letter dated 19.03.2015, which was granted by the respondent. However, by justifying their claim by stating that due to several assessment years (11 years), another 45 days time was sought for by them, through letter dated 18.05.2015, however, the respondent has granted only 10 days time. Again, the petitioner, finding that there is insufficient time, sent another letter dated 28.05.2015, wherein, while objecting for imposition of penalty under the CST Act for the assessment years 2007-08 to 2009-10 and 2012-13 (4 cases), made a request of another 10 days time for filing detailed replies for the TNVAT Assessments (7 cases) relating to the years 2007-08 to 2013-14). The grievance of the petitioner, according to the learned counsel for the petitioner is that without granting time, the respondent has passed the orders in TIN.No.3331520924 for the 7 assessment years viz., 2007-08 to 2013-14 on 29.05.2015, which were served on the petitioner on 06.06.2015.

4.4. Pleading further, the learned counsel for the petitioner would submit that it is not the case of the respondent that the petitioner, after taking time, has declined or evaded from filing objections. As a matter of fact, in their letter dated 28.05.2015, objecting for imposition of penalty for under the CST Act for the assessment years 2007-08 to 2009-10 and 2012-13 (4 cases), the petitioner has filed brief reply, however, sought for 10 days time for filing detailed replies for the 7 assessment years under the TNVAT Act viz., 2007-08 to 2013-14. Therefore, when the petitioner has asked for reasonable time considering the fact they require some more time for preparing replies for the 7 assessment years, the respondent, ought to have considered the same by granting reasonable time.

4.5 To show the bona-fide of the petitioner, the learned counsel has also brought to the notice of this Court the final replies, which have been submitted on 02.06.2015 with the proof of acknowledgment given by the respondent. Therefore, the learned counsel submitted that when the petitioner has filed his final replies on 02.06.2015, that could have been considered, as they would meet all the suspicions and surmises raised by the Assessing Officer. However, the respondent, before the detailed replies filed, has passed the impugned orders. Hence, the petitioner is before this Court.

5. Opposing the above prayer, Mr.S.Kanmani Annamalkai, learned Additional Government Pleader (Taxes), appearing for the respondent submitted that when the petitioner was issued with notices dated 20.02.2015 for the assessment years 2007-08 to 2013-14 both under CST and TNGST proposing to impose tax and penalty, the petitioner, by letter dated 19.03.2015, sought 45 days time, stating that for 11 cases, they need such a huge time. The petitioner was granted the full time sought for by them. Without making use of the said 45 days long time granted by the respondent, again, the petitioner came with one more request to drag on the matters, seeking more time. However, the respondent, without refusing the repeated requests for adjournment, once again granted another 10 days time. It is the contention of the learned Additional Government Pleader that after repeatedly making use of the time granted by the respondent, the petitioner ought not to have come to this Court, as he has got a right of appeal under Section 51 of the TANVAT Act. However, when the final replies dated 02.06.2015 submitted by the petitioner with acknowledgment were brought to the notice of this Court, the learned Additional Government Pleader, in all fairness, submitted that the same could have been considered by the respondent, in the meanwhile, unfortunately, the respondent has passed the impugned orders.

6. This Court, also, considering the fact that after availing 45 days time plus another 10 days time, the petitioner, has filed his reply dated 28.05.2015, objecting for imposition of penalty under the CST Act for the assessment years 2007-08 to 2009-10 and 2012-13 (4 cases) and has also sought for another 10 days time for filing detailed replies for the TANVAT Assessments (7 cases) relating to the

assessment years 2007-08 to 2013-14, for the said letter, there being no reply, it would be possible that the petitioner was under the impression that the respondent has granted some more time and under this hope the petitioner also started preparing their replies and finally filed replies on 02.06.2015, which has been acknowledged by the respondent. Therefore, in all fairness, this Court, without relegating the petitioner before the appellate authority, for the reason that the Assessing Officer has also applied his mind, thinks it fit to direct the Assessing officer to reconsider the matter afresh on the basis of the detailed replies filed by the petitioner dated 02.06.2015.

7. In view of the above, while setting aside the impugned orders dated 29.05.2015, the matters are remanded to the Assessing Officer for fresh consideration by considering the detailed replies filed by the petitioner dated 02.06.2015, on merits and in accordance with law. It is open to the respondent to issue notice in advance and then pass appropriate orders.

In the result, the writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To
The Assistant Commissioner (CT)
Pondy Bazzar Assessment Circle
Greenways Salai, Chennai-28.

+2 ccs to Mr.D.Vijayakumar, Advocate, vide sr.33771
+2 ccs to special Government Pleader (Taxes) vide sr.33956, 33957.

W.P.Nos.19912 to 19914 and
19503 to 19506 of 2015

gj (co)
kra(03/08)