IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.9893 & 9894 of 2017
and WMP Nos.10893 to 10896 of 2017

M/s. Fams Super Market,
Rep. by its Partner, Mohamed Aqeel,
16 & 17 Jalal Road,
Ambur, Vellore District ... Petitioner in both W.Ps.

..vs..

The Commercial Tax Officer,
Ambur Assessment Circle,
Ambur, Vellore District ... Respondents in both W.Ps.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in her proceedings in TIN Nos.33434265236/2014-15, dated 30.09.2016; No.33434265236/2015-16, dated 14.10.2016 and consequential order in TIN Nos.33434265236/2014-15 and 2015-16, both dated 28.03.2017 and to quash the same as illegal.

For Petitioner in both W.Ps. : Mr. S.Ramanathan
For Respondent in both W.Ps.: Mr. K.Venkatesh, Govt. Advocate

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<u>C O M M O N O R D E R</u>

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who accepts notice for the respondents, in each of the above petitions. With consent of the learned counsel for both sides, the writ petitions themselves are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act and the Central Sales Tax Act, engaged in the business of consumer products of general goods, grocery items, oil, etc., In these writ petitions, the petitioner has challenged the orders of assessment under the TNVAT Act, for the assessment years 2014-15 and 2015-16.

3. The respondent, for both the assessment years, issued notices, dated 22.08.2016 and 24.08.2016. It was alleged that, on verification of the Annexure-I of the monthly returns filed, it was noticed that the petitioner had claimed Input Tax Credit (ITC) on the local purchases effected from the local registered dealers, for

which corresponding sales details have been noticed as mis-match and the details of the alleged mis-match were furnished in a tabulated form. In fact, the notice itself runs to more than 50 pages.

4. After furnishing the details in the tabulated form, the respondent directed the petitioner to produce the original purchase invoices on the disputed purchase turnover and also evidence, if any, for the submission of other end dealers (sellers). Monthly return copies with payment / adjustment details in concerned circles, particulars or records such as way bill, delivery challans, for proof for the movement of the goods inward and outward, or transfer receipts, mode of payment, bank statement etc., as the case may be, in order to prove the genuineness of the ITC claims made by the dealer, for the purpose of assessment, levy and collection of tax under this Act.

5. However, the petitioner was informed that it was not supported by valid proof and evidence. Thus, the Assessing Officer proposes to disallow the claim of ITC adjustment towards the Output Tax due. The respondent also proposed to levy the penalty

under Section 27 (4) (ii) of the TNVAT Act. The petitioner is stated to have appeared before the respondent and produced the entire details of the transactions done by it. However, it appears that they did not submit any written objections. Therefore, the respondent passed the impugned assessment orders stating as if no objections were filed and they have not produced original purchase invoices and proof for payment of tax to their sellers, in order to prove their genuineness of ITC claim.

6. Immediately, on receiving the said order, the petitioner submitted a representation on 04.01.2017, pointing out that they are running the super-market, they have been filing monthly returns in From-I, have been claiming Input Tax Credit and Out-put tax on monthly basis and they have filed all purchase bills with the respondent and most of the purchases are in the same assessment circle, namely, Ambur Assessment Circle. They have filed Annexure-I in the monthly returns, but the other end dealers have not filed Annexure-II with the petitioner's bill details and they shown only the total sales in Annexure-II, in cash sales only, and most of the sellers are doing the same mistake. Therefore, the petitioner requested the respondent that they have already submitted all

purchase invoices (xerox copies with ledger copies of the sellers) for immediate reference of the respondent and requested the respondent to verify the genuineness of the same and withdraw the tax and penalty levied.

7. Though such a specific request was made by the petitioner, the respondent has passed the impugned orders, while admitting that they have purchased the original purchase invoices and has given a finding that they have not given any proof for payment of tax to their sellers. In fact, tax invoice will contain the amount of tax paid. Further, if there was any due regarding the genuineness of the statement made by the petitioner, the respondent should have called for other details. But that effort was not taken by the respondent. That apart, the petitioner has specifically stated that most of their sellers are registered within the same assessment circle and they are committing the same mistake by showing only the total transactions in Annexure-II and most of them are cash sales.

8. The respondent, unfortunately, did not even make an attempt to verify as to which of the dealers are within the same

assessment circle. It appears that the Assessing Officer was not at all aware of the same, because while issuing notices, dated 22.08.2016 and 24.08.2016, the respondent has stated that the petitioner should produce the monthly return copies of the sellers with payment and adjustment details in the concerned notices/circulars. If the other end dealers are registered within the same circle, the respondent should be aware of the same and should have made an attempt to verify the facts.

9. That apart, when completing the assessments based on mis-match between the details shown in the dealers returns and the details of the dealers at other end, this Court, in the case of **J.K.M. Graphics Solutions Private Limited v. Commercial Tax Officer (2017) 99 VST 343 (Madras)** has considered the matter and had given certain broad guidelines as to how the Assessing Officer have to undertake the exercise, by conducting thorough enquiry in consultation with the Assessing Officer of the other end. The Assessing Officer has also not followed the directions issued by this Court in the said decision in **J.K.M.Graphics Solutions Private Limited's case**, cited supra.

10. Thus, the impugned orders, having been passed without due application of mind and without proper verification, deserve to be set-aside. Accordingly, the writ petitions are allowed and the impugned orders are set-aside, the matters are remanded back to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, verify all the collected details in respect of other end dealers, who are registered with the same circle and if any further clarification is required, direct the petitioner to appear for further hearing and after thoroughly examining the entire matter, pass fresh orders on merits and in accordance with law. No costs. Consequently, the connected WMP is closed.

09.08.2017

Index : Yes / No
Web : Yes / No

Speaking Order / Non Speaking Order.

srk

T.S.SIVAGNANAM, J.,

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To

1. The Commercial Tax Officer,
   Ambur Assessment Circle,
   Ambur, Vellore District

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