IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.05.2017

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.A. Nos. 479 to 482 of 2017
&
W.M.P. Nos. 7220 to 7226 of 2017

M/s.KLN Motor Agencies Pvt. Ltd.,
rep. by its Managing Director,
Plot No.8, Guindy Industrial Estate,
Ekkattuthangal,
Chennai - 600 097. ..Appellant in all the appeals

Vs.

The Assistant Commissioner (CT)
Amaindakarai Assessment Circle,
Chennai - 600 102. ..Respondent in all the appeals

Prayer: Writ Appeals against the final order dated 03.02.2017 passed in W.P. No. 2595 to 2598 of 2017

Prayer in W.P.Nos.2595 to 2598 of 2017:-

Calling for the records of the respondent in his proceedings in TIN/33201024932/2010-11, TIN/33201024932/2011-12, TIN/33201024932/2012-13 and TIN/33201024932/2013-14 2013-14 and quash the assessment order dated 22.12.2016 passed therein.

For Appellant :: Mr.B. Raveendran

For Respondent :: Mr.A. Kanmani Annamalai
Addl. Govt. Pleader (T)

J U D G M E N T

(Judgment of the Court was delivered by R. MAHADEVAN,J.)

These writ appeals are directed against the order dated 03.02.2017 passed in W.P. Nos. 2595 to 2598 of 2017.

2. The facts that led to the filing of the writ petitions are :

The appellant/petitioner is a dealer in motor cars and is registered on the files of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, hereinafter, referred to as TNVAT Act. During the course of business, the appellant/petitioner had effected interstate purchase of motor cars from Pune and Bangalore and inturn effected local sales to customers within the State of Tamil Nadu and in accordance with the statutory provisions, had remitted entry tax at the stage of import of motor vehicles into the State of Tamil Nadu and adjusted the same towards the output tax liability under the TNVAT Act on the resale of the said motor vehicles. Accordingly, the appellant/petitioner had filed their monthly returns and paid the output tax under the TNVAT act after availing the reduction in tax liability provided under the Entry Tax Act. While so, there was an inspection conducted by the Enforcement Wing in the premises of the appellant/petitioner company on 01.10.2015 and pursuant to the said inspection, several defects were pointed out concerning the assessment years 2010-2011 to 2013-2014 and as per the report of the Enforcement Wing, these defects are 16 in number. As a sequel to the said inspection, a notice was issued by the respondent on 09.08.2016 and the appellant/petitioner, by letter dated 04.11.2016 sought time to file their reply to the notices issues qua each of the aforementioned assessment years. Though several opportunities were granted, it seems that the appellant/petitioner company neither filed their objection nor additional documents and therefore, the assessment orders dated 22.12.2016 came to be passed, assailing which W.P.Nos. 2595 to 2598 of 2017 came to be filed and by order dated 03.02.2017, while granting leave to the appellant/petitioner to file a petition under Section 84 of TNVAT Act, 2006, in respect of defect Nos. 1 and 10, stayed the recovery of tax imposed for each of the assessment years concerning these defects, however, on the request made by the learned Senior Counsel for the appellant/petitioner, permitted that the appellant/petitioner can include other issues with regard to other defects pointed out as well, in the rectification petition to be filed under Section 84 and accordingly, disposed of the writ petitions with the above directions. It is this order which is under challenge in these writ appeals, as subsequently, the respondent has issued a letter dated 10.03.2017, by which the appellant/petitioner has been informed that the contentions raised in Section 84 petition, would be considered only in respect of defect Nos.1 and 10.

3. Heard the learned counsel for the appellant and the learned Additional Government Pleader appearing for the

respondent.

4. The scope of these writ appeals is very limited, which relates to consideration of ground defects, totally, 16 and this Court, in the order dated 03.02.2017, in W.P. Nos. 2595 to 2598 of 2017, which is the subject matter of challenge in these writ appeals, at paragraph No.14, made it open to the appellant to agitate all the issues in the petition for rectification under Section 84 of TNVAT Act. The relevant portion, at paragraph No. 14, of the order dated 03.02.2017 in W.P. Nos. 2595 to 2598 of 2017 is usefully extracted hereunder:

> "14. At this stage, the learned Senior Counsel submits that, he would like to include, in Section 84 petition, issues with regard to the other defects, as well, which were pointed out in the Inspection Report, based on which, pre-assessment notice was issued. To my mind, the petitioner cannot be bound down not to include other issues as well with a caveat, though, which is, that it would be open to the respondent/Assessing Officer to come to the conclusion whether or not they come within the ambit of errors apparent on the face of record."

However, before the receipt of the certified copy of the order, recovery proceedings were initiated and recovery notice dated 27.02.2017 was issued by the respondent. Challenging the same, the appellant filed W.P. No. 5649 of 2017 and this Court, by order dated 03.03.2017, permitted the appellant to file the petition under Section 84 of Tamil Nadu Value Added Tax Act, within a period of one week from that date, and the respondent was directed to consider and dispose of the same and the recovery notice, impugned therein, was ordered to be kept in abeyance, till orders are passed in the rectification petition. Thereafter, the appellant filed rectification petitions dated 08.03.2017 wherein the appellant placed all the submissions relating to the defects encompassed in the assessment orders dated 22.12.2016. But, the Assessing Officer, by his intimation letter dated 10.03.2017, has informed the appellant as hereunder:

Intimation Letter

> "Tvl. KLN Motor Agencies Pvt. Ltd. , dealer in Amaindakarai Assessment Circle is hereby informed that, in the Hon'ble High Court order of the W.P. Nos. 2595 to 2598/2017, the Hon'ble High Court of Madras has directed me to consider the dealer reply under Sec.84 for defect No.1 and 10, and for the remaining portion, it is open to the assessing authority to decide. Except defect No.1 and 10, the court has not given any stay for recovery of tax.
>
> In the Writ Petition 5469/2017, you have stated that, you are not receiving original order copy of W.P.

No. 2595 to 2598/2017 to file reply u/s 84 to the assessing authority. And the Hon'ble High Court of Madras has also granting 1 week time to file reply u/s 84. It is acceptable only for the defect No.1 and 10, not for the other portions. Your contention in the letter dated 08.03.2017 is considered only for defect No.1 and 10.....

5. A perusal of the order under challenge, especially, paragraph No.14, only leads to the inference that the Assessing Authority has misconstrued that this Court, in W.P. Nos. 2595 to 2598 of 2017 permitted the appellant to agitate their grievance in respect of defect Nos. 1 and 10 alone, while, in fact, the appellant had been permitted to include issues with regard to other defects as well. Such an understanding of the order of this Court by the respondent could only be termed as improper. At the same time, the intimation letter of the respondent dated 10.03.2017 cannot be allowed to stand. Hence, the petitioner could have very well challenged the said intimation letter dated 10.03.2017 instead of filing the Writ Appeal, challenging the order dated 03.02.2017 in W.P.Nos.2595 to 2598 of 2017, which, in our considered view, does not require any interference.

6. However, considering the fact that the intimation letter of the respondent dated 10.03.2017 cannot have the legs to stand, the respondent is directed to consider the issues raised in the rectification petitions filed by the appellant, on merits, in accordance with law and after giving due opportunity to the appellant and pass necessary orders, within a period of four weeks from the date of receipt of a copy of this order. If the appellant fails to avail this opportunity, it is always open to the respondent to pass appropriate orders on merits. The writ appeals are disposed of on the above terms. No costs. Connected W.M.Ps are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nv

To

The Assistant Commissioner (CT)
Amaindakarai Assessment Circle,
Chennai - 600 102.

+1cc to Mr.B.Raveendran, Advocate Sr. 37596

+1cc to the special Government Pleader,
High Court, Madras Sr. 37664

W.A. Nos. 479 to 482 of 2017

SJ(CO)
VR(01/06/2017)