IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

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

W.P.Nos.18654 to 18657 of 2017
W.M.P.Nos.20192 to 20195 of 2017

M/s.Fawz Tanners,
Rep by its Partner,
Mr.A.Thanveer Ahmed,
No.10/9, Mangattan Sheik Mohd Ali Street,
Ambur,
Vellore District. ..Petitioner in all W.Ps

Vs.

Commercial Tax Officer,
Ambur Assessment Circle,
Vellore District. ..Respondent in all W.Ps

Prayer in all W.Ps : Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent and to quash the assessment proceedings in TIN No.33334264224/2012-13, 2013-14, 2014-15, 2015-16, dated 28.04.2017 as illegal and direct the respondent to furnish all the details of informations obtained from the departmental Web site for the alleged mismatch purchases and sales and decide the petitioner's case as per the guidelines and directions given by the Madras High Court in the mismatch batch of cases in W.P.No.105/2016 and other relating to M/s.JKM Graphics Solutions Pvt Limited & others Vs. Commercial Tax Officer, Vepery Assessment Circle and others dated 01.03.2017 after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Baktha Siromoni
For Respondent : Mr.K.Venkatesh,
Government Advocate

C O M M O N O R D E R

Heard Mr.C.Baktha Siromoni, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent on either side, the writ petitions themselves are taken up for disposal.

2. All these Writ Petitions have been filed by the petitioner, who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax

Act, 2006, (TNVAT Act) and has challenged the impugned orders ,which are orders of assessment under the TNVAT Act for the years 2012-13, 2013-14, 2014-15 and 2015-16.

3.The major issue ,which is involved in all these cases, is regarding the mismatch between the Annexure 1 and Annexure 2 returns filed by the petitioner and the other end dealer. The petitioner was issued show cause notices for all the assessment years, dated 13.03.2017, proposing to revise the assessment for the relevant years.

4. On a perusal of the show cause notice, it is seen that it contains the Seller's Tin Number, Office Name, Purchase Tool, VAT Paid, Seller Tin, Seller Name, Sales Tool, Sales Tax, Turn Over and Tax. The petitioner on receipt of the revision notices, submitted their objections dated 07.04.2017. I have perused the objections and I find that the objections are very sketchy and do not meet the allegations made in the show cause notice, dated 13.03.2017. On receipt of the objections, the respondent has proceeded to complete the assessment and pass the impugned order.

5. The learned counsel for the petitioner would submit that the details furnished in the revision notice, dated 13.03.2017, is inadequate, No enquiry was conducted, Commodity code, invoice numbers have not been furnished and therefore, the entire assessments have to be set aside and the assessments have to be re-done.

6. After hearing the learned counsels appearing for the parties and perusing the materials placed on record, I find that the contention raised by the petitioner is not wholly correct. The revision notices, dated 13.03.2017, undoubtedly contains the necessary details. It may be true that in respect of certain transactions, the invoice numbers are missing or the turnover is stated to be '0' etc. However, in respect of transactions where full details have been given in the revision notice, the petitioner has not even taken care to give a proper reply by reconciling the invoice numbers with their books and submitting a proper explanation. As mentioned earlier, the objection given by the dealer dated 07.04.2017, is sketchy and bereft of particulars. Merely, by referring to the decisions of this Court in the objections will not help the petitioner, as the decisions can be applied only to the facts of the case. Therefore, there is a duty for the petitioner to first factually explain how the proposal in the revision notice dated 13.03.2017, is not tenable. The petitioner has failed to do so and is now before this Court praying for a relief, which cannot be granted. While on this issue, this Court would wish to point out that apart from the obligations that the dealer has to discharge in mismatch cases , the Court in the case of M/s.JKM Graphics Solutions Pvt Ltd and others Vs. Commercial Tax Officer, Vepery Assessment Circle and others in W.P.No.105 of 2016 etc., batch dated

01.03.2017, has given directions to the Assessing Officer as to how and in what manner, the enquiry has to be conducted. It may be true that unless and until the dealer furnishes the proper details, the Assessing officer cannot embark upon an enquiry. In the present cases, I find that the Assessing Officer has taken certain efforts to furnish the invoice numbers and other details, though it may be true in respect of certain transactions, the full details have not been mentioned. In any event, wherever full details have been given, the dealer was bound to give proper explanation. If the dealer wants further information, he should have asked the Assessing Officer by submitting a representation. However, in the instant case, the dealer did not resort to such a procedure, but merely, submitted an objection without giving any proper details and only referring to two judgments of this Court. Therefore, substantial part of the fault lies on the dealer. Assuming that the petitioner had furnished all those details, then the Assessing Officer has to embark upon an enquiry reconcile the details furnished by the dealer with that of the information available in the website and then complete the assessment. The seriousness with which the matter has to be dealt with by the Assessing Officer has been brought out in the case of M/s.JKM Graphics Solutions Pvt Ltd (supra). The Court emphasised such procedure to be followed, because the assessment already made is sought to be re-opened or revised based on materials, which the dealer will have no access, as it is culled out from the departmental website. Therefore, in doing so, the Assessing Officer should be extra careful, so as to furnish all details and then conduct an enquiry and then take a decision in the matter.

7. Thus, considering the facts and circumstances of the case, this Court is of the view that the petitioner can be afforded one more opportunity to explain with regard to the transactions where full details have been given to them and in respect of the other transactions mentioned in the revision notice, the dealer can request the Assessing Officer, to furnish additional details and then submit a comprehensive representation. However, for doing so, the petitioner should be put on terms as prima facie, this Court is of the view that the Assessing Officer has done a proper exercise and the mistake lies on the dealer.

8. In the light of the above, the Writ Petitions are disposed of, by directing the petitioner to pay 15% of the disputed tax for each of the assessment years, within a period of fifteen days from the date of receipt of a copy of this order. If the petitioner complies with the said condition, then the petitioner would be entitled to treat the impugned assessment orders as notices and submit a proper reply and the petitioner is also at liberty to seek for additional information from the Assessing Officer and after giving a comprehensive reply, the Assessing Officer shall enquire into the matter bearing in mind the principles set out in the case

of M/s.JKM Graphics Solutions Pvt Ltd, and after affording an opportunity of personal hearing, pass a speaking order on merits and in accordance with law.

9. In the event, the petitioner does not pay the 15% of the disputed tax, within the time permitted, the benefit of this order will not enure to the petitioner and the writ petitions will stand automatically dismissed, however, leaving it open to the petitioner to avail the appellate remedy under the provisions of the Act. Accordingly, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gsk/pbn

To

Commercial Tax Officer,
Ambur Assessment Circle,
Vellore District

+ 1 cc to M/s.C.Baktha Siromoni, Advocate SR.51682
+ 1 cc to Government Pleader Sr.51779

W.P.Nos.18654 to 18657 of 2017

NRI(CO)
Eu 09.08.17