



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.06.2017**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD].Nos.859 to 862 of 2017 and W.P.[MD]Nos. 5086, 8574, 8580,
8586, 8615 and 9820 to 9823 of 2017

and

C.M.P.[MD]Nos.5796 to 5799 of 2017 and W.M.P.[MD]Nos.4094, 6511,
6513, 6516, 6494 and 7528 to 7531 of 2017 respectively

W.A. (MD)No.859 of 2017:

Tvl.Balaji Super Market,
Represented by its Proprietor Thiru.S.Paulraj,
3-A, Pasuvanthanai Road,
Kovilpatty, Tuticorin District. : Appellant in all the WA'S
and Petitioner in all the Writ Petitions
Vs.

- 1.The State of Tamil Nadu,
Represented by it's Secretary to Government,
Department of Commercial Taxes And Registration Department,
Fort St. George, Beach Road, Chennai-600 009.
- 2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk, Chennai-600 005.
- 3.The Commercial Tax Officer (FAC)
C.T.Buildings, Ettayapuram Road,
Kovilpatty - 628 501, Tuticorin District. : Respondents in all the
WA'S and WP'S

PRAYER in W.A. (MD)No.859 of 2017: Writ Appeal is filed under Clause 15 of the Letters Patent Act, to set aside the condition of the deposit of 20% of the demanded amount in W.M.P.(MD)No.7528 of 2017 in W.P.(MD)No.9820 of 2017 dated 25.05.2017 by allowing the Writ Appeal.

Prayer in WMP(MD). 7528/ 2017 :

Petition to pass an interim stay of all further proceedings in pursuance to the 3 rd respondent notice in TIN No. 33365861943/2011-2012 dated 21.04.2017 received by the petitioner on 02.05.2017 pending disposal of the above said writ petition.



Prayer in WP(MD) . 9820/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus or any other appropriate writ or order or direction to call for the records relating to the notice issued by the 3rd respondent in TIN No. 33365861943/2011-2012 dated 21.04.2017 received by the petitioner on 02.05.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings and thus render Justice.

Prayer in WA(MD) . 860/ 2017 :

Writ Appeal is filed under clause 15 of the Letters Patent Act, against the order passed by this Court in WMP(MD)No. 7529 of 2017 in WP(MD)No. 9821 of 2017 dated 25/05/2017.

Prayer in WMP(MD) . 7529/ 2017 :

Petition to pass an interim stay of all further proceedings in pursuance to the 3rd respondent notice in TIN No. 33365861943/2012-2013 dated 21.04.2017 received by the petitioner on 02/05/2017 pending disposal of the above said writ petition .

Prayer in WP(MD) . 9821/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction to call for the records relating to the notice issued by the 3rd respondent in TIN.No. 33365861943/2012- 2013 dated 21.04.2017 received by the petitioner on 02/05/2017 quash the same and to direct the 3 rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WA(MD) . 861/ 2017 :

Writ Appeal is filed under clause 15 of the Letters Patent Act, against the order passed by this Court in WMP(MD)No. 7530 of 2017 in WP(MD)No. 9822 of 2017 dated 25/05/2017.

Prayer in WMP(MD) . 7530/ 2017 :

Petition to pass an interim stay of all further proceedings in pursuance to the 3rd respondent notice in TIN No.33365861943/2014-2015 dated 21.04.2017 received by the petitioner on 02.05.2017 pending disposal of the above said writ petition .

Prayer in WP(MD) . 9822/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus or any other appropriate writ or order or direction to call for the records relating to the notice issued by



the 3rd respondent in TIN No.33365861943/2014-2015 dated 21.04.2017,, received by the petitioner on 02.05.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WA(MD) . 862/ 2017 :

Writ Appeal is filed under clause 15 of the Letters Patent Act, against the order passed by this Court in WMP(MD)No. 7531 of 2017 in WP(MD)No. 9823 of 2017 dated 25/05/2017.

Prayer in WMP(MD) . 7531/ 2017 :

Petition to pass an interim stay of all further proceedings in pursuance to the 3rd respondent notice in TIN no. 3336581943/2013-2014 dated 21.04.2017, received by the petitioner on 02.05.2017 pending disposal of the above said writ petition.

Prayer in WP(MD) . 9823/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus direction to call for the records relating to the notice issued by the 3rd respondent in TIN no. 33365861943/2013-2014 dated 21.04.2017, received by the petitioner on 02.05.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WP(MD) . 5086/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus or any other appropriate writ order or Directions to call for records relating to the revision of Assessment order passed by the 3rd respoondent in his proceeding in TIN No 33365861943/2010-2011 dt.23/02/2017 (received by the petitioner on 25/02/2017). and quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WP(MD) . 8574/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ or order or direction to call for the records relating to the revision of assessment order passed by the 3rd respondent in his proceedings TIN No.33365861943/2013-2014 dated 21.03.2017, received by the petitioner on 29.03.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

**Prayer in WP(MD) . 8580/ 2017 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction to call for the records relating to the revision of assessment order passed by the 3rd respondent in his proceedings TIN No.33365861943 /2011-2012 dated 21.03.2017, received by the petitioner on 29.03.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WP(MD) . 8586/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ or order or direction to call for the record relating to the revision of assessment order passed by the 3rd respondent in his proceedings TIN No.33365861943/2014-2015 dated 21.03.2017, received by the petitioner on 29.03.2017 quash the same and to direct the 3rd respondent to pass fresh order after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WP(MD) . 8615/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the revision of assessment order passed by the 3rd respondent in his proceedings TIN No. 33365861943/2012-2013 dated 21.03.2017 received by the petitioner on 29.03.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WP(MD) . 9820/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorarified mandamus or any other appropriate writ or order or direction to call for the records relating to the notice issued by the 3rd respondent in TIN No. 33365861943/2011-2012 dated 21.04.2017 received by the petitioner on 02.05.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .



Prayer in WP(MD) . 9821/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus or any other pappropriate writ or order or direction to call for the records relating to the notice issued by the 3rd respondent in TIN.No. 33365861943/2012- 2013 dated 21.04.2017 received by the petitioner on 02/05/2017 quash the same and to direct the 3 rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WP(MD) . 9822/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus or any other appropriate writ or order or direction to call for the records relating to the notice issued by the 3rd respondent in TIN No.33365861943/2014-2015 dated 21.04.2017,, received by the petitioner on 02.05.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings .

Prayer in WP(MD) . 9823/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified mandamus direction to call for the records relating to the notice issued by the 3rd respondent in TIN no. 33365861943/2013-2014 dated 21.04.2017, received by the petitioner on 02.05.2017 quash the same and to direct the 3rd respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearings.

For Appellant : Mr.MD.Ibrahim Ali in all the WA'S & WP'S

For Respondents: Mr.S.Karthikeyan
Additional Government Pleader.
(in all the Writ Appeals) & WP'S

COMMON JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

When the Writ Appeals were filed by the appellant dealer, challenging the conditional interim order granted by the learned Single Judge, at the request of the learned counsels appearing on either side, the Writ Petitions themselves were directed to be disposed along with these appeals, as the issue involved in the Writ Petitions was in a very narrow compass. Therefore, the writ



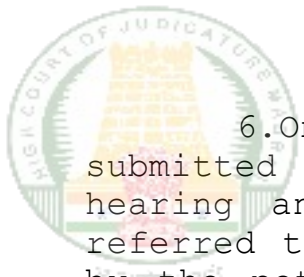
petitions, challenging the assessment orders under the Provisions of the Tamil Nadu Value Added Tax Act, 2006, [for brevity, "the Act"], for the assessment years 2010-2011 to 2014-2015, have been listed along with the appeals.

2. Apart from that, W.P.(MD)Nos. 9820 of 2017 to 9823 of 2017, have also been tagged in this batch, as these writ petitions have been filed by the petitioner dealer, challenging the demand notices issued by the Assessment Officer for the assessment years 2011-2012 to 2014-2015. Since, the petitioner had obtained an order of interim stay for the assessment year 2010-2011, no demand notice has been issued to the petitioner.

3. The petitioner is a registered dealer on the file of the respondent, under the provisions of the Act, dealing in house-hold articles, and it is a super market. It may not be necessary for us to go into the amount of the total and taxable turn over reported by the dealer for all the assessment orders, except to note that the dealer has filed his returns within the time permitted under the provisions of the Act.

4. The respondent Assessing Officer, on perusal of the returns filed by the petitioner dealer for the relevant assessment years and upon verification of the Annexure II of the other end dealers, opined that the returns furnished by the petitioner are incorrect. This led to the issuance of pre-assessment notices on 15.12.2015, for all the five assessment years. It is stated in the said notices that on verification of the records of the petitioner (to mean the returns), it was ascertained that the petitioner had claimed Input Tax Credit on the purchase and had not made any Input Tax Credit Reversal for the relevant year. But, as per the purchase details derived from the other end dealers, in their Annexure II, it is revealed that the petitioner had not reported the sales completely to the Government and therefore, reduced the quantum of Input Tax that was eligible to be claimed by the petitioner.

5. Further, it was stated that the invoice wise purchase list is available in the office of the respondent for all the said purchase and since, it is voluminous, it will be sent to the petitioner on the basis of a request letter. After stating so, the Assessing Officer observed that there was a difference in the purchase turnover between the petitioner's Annexure I and the Annexure II of the other end dealers. Accordingly, proposal was made to reverse the Input Tax Credit, under section 19 (16) of the Act, for all the five assessment years. The petitioner was granted 15 days time to submit his objection, failing which, he was informed that final orders would be passed.



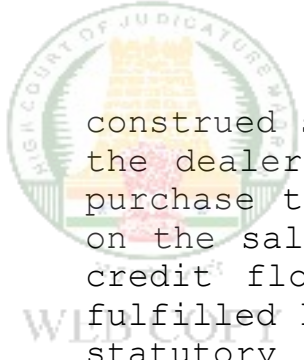
6. On receipt of the notice, it appears that the petitioner submitted a reply / request letter, requesting for a personal hearing and also copies of the relevant documents which were referred to by the Assessing Officer. This reply / request made by the petitioner vide letter dated 22.02.2016, was received by the Assessing Officer on the very same date. Though, such a specific request was made by the petitioner for a personal hearing and supply of copies of documents, the Assessing Officer has ignored such request and merely observed that the petitioner has filed his reply along with copies of purchase invoices and the said documents were verified in the light of the provisions of the Acts and Rules and proceeded to complete the assessment.

7. The first aspect that has to be seen is, whether the manner in which the Assessing Officer proposed to revise the assessment is proper. Admittedly, the proposal to revise the assessment was based upon an inconsistency between Annexure I, return filed by the petitioner dealer and that of the other end dealers in Annexure II. This very issue was considered by one of us (**T.S.S.J.**) in the case of **JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai** reported in (2017) 99 VST 343 (Mad).

8. In the said batch of cases, the question arose as to how such revision of assessment could be made when there is inconsistency or discrepancy between Annexure I and II, when the Assessing Officer gathers information from the official website of the Commercial Tax Department. At this stage, it would be relevant to refer to the operative portion of the order.

"...53. The position under the TNVAT Act is no different after the recent amendment by Tamil Nadu Act, 2015, with effect from January 29, 2016, by which the words "tax paid or payable" occurring in section 19(1) was substituted with the word "tax paid" and a proviso was inserted under subsection (I) of section 19. As mentioned above, all these cases pertained to orders passed prior to the amendment, I.e., before January 29, 2016. It was argued on behalf of the petitioners that the expression used in section 19 (1) of the TNVAT Act is tax paid or payable under the Act and if the purchasing dealer is able to produce proof to show payment of tax, then nothing more is required to be done by him and he is entitled to credit as a matter of right. In the considered view of this court, the amendment to the Act brought about by act 13 of 2015 with effect from January 29, 2016, does not cause much impact on the controversy, which is being dealt with in these writ petitions, as the benefit of credit itself is a creation of the statute.

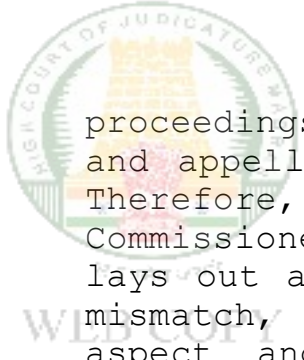
54. As explained by the honourable Supreme Court, it is a concession extended to the dealer and a person, who claims such a concession has to establish that he is entitled to such concession. Such provision providing for such concession should be



construed strictly, thus but for this provision under the statute, the dealer does not acquire a legal right to claim credit of the purchase tax paid and of input credit from the sales tax payable on the sale of goods manufactured by him. The entitlement to such credit flows from the statute. Therefore, the conditions to be fulfilled by the dealer to be entitled to such a credit, which is statutory in character, is mandatory. Therefore, it will be too broad principle to state that all that the dealer is required to produce along with his return, proof of payment of tax and documents required to be filed along with return and would be automatically entitled to credit. This is so because the object of introducing such mechanism permitting credit is on one hand to ensure against cascading tax burden and on the other hand of promoting regulatory compliance. Thus, if a concession so granted by the statute is shown to have been availed, furnishing incorrect details or adopting certain other dubious methods, the same requires to be dealt with under the statute and such unintended benefit has to be reversed.

55. Admittedly, in the instant case, there is no challenge to the statutory provisions and the complaint of all the dealer is largely on the procedure adopted by the respective assessing officers. The Principal Secretary and Commissioner of Commercial Taxes conscious of the problems faced by the dealers as complaints were received which had lead to issuance of a circular as early as on April, 1, 2015. The directions contained in the said circular are very pointed direction, but it is sad to note that the circular remains only on paper and seldom assessing officers follow the circular resulting in several assessments being set aside by the court and remanded for denova consideration. Thus, this court is fully convinced that the procedure adopted by the respondent, assessing officers in all these cases are half baked attempts, which have not yielded results and these cases are before this court or before the appellate authorities and all that the assessing officers can record is that they have issued show-cause notices or passed orders reversing the input-tax credit with no appreciable impact on the revenue collection.

56. The procedure adopted under the Maharashtra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections, etc. However, this court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the Department within its level before the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of



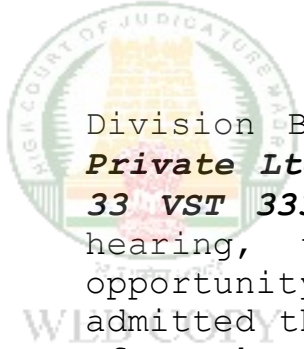
proceedings with more number of cases pending before the courts and appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective assessing officers, who can decide for themselves as to whether there is a case made out to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective assessing officers without even the knowledge of the assessing officer of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

57.Hence, for all the above reasons, all the writ petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective assessing officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the assessing officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the assessing officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharashtra, Gujarat, and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the state State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to put forth his case and establish that he is entitled to the concession/ set-off availed."

9.The above referred decision was taken note of by us in the case of **J.Alagu Meena, Proprietor of Jai Vishal Traders Vs. The Commercial Tax Officer, Kovilpatti- II, Tuticorin District** reported in **W.A. (MD)No.109 of 2017** dated **06.06.2017**.

10.Admittedly, the Assessing Officer did not follow the procedure which was directed to be adhered to in the said decision. This would be sufficient to hold that the petitioner had no effective opportunity to put forth his objection as the Pre-Assessment Notice was bereft of particulars. Consequently, the impugned Assessment Orders are flawed.

11.The second mistake committed by the Assessing Officer is, not affording an opportunity of personal hearing. The Hon'ble



Division Bench of this Court in the case of **Tvl. SRC Projects Private Ltd. Vs. The Commissioner of Commercial Taxes** reported in **33 VST 333**, has held that when request is made for a personal hearing, the Assessing Officer is bound to afford such an opportunity. In the instant case, the Assessing Officer has admitted that the dealer has submitted his reply along with copies of purchase invoices but has ignored to note the specific request for personal hearing. This error would vitiate the impugned Assessment Order.

12. Thus, on the above two grounds, we are of the considered view that the petitioner dealer did not have adequate opportunity to put forth his objections and the impugned Assessment Orders are vitiated on the ground of violation of Principles of Natural Justice.

13. In the light of the above, W.P.(MD)Nos.5086, 8574, 8580, 8586 and 8615 of 2017 are allowed and the impugned Assessment Orders are set aside and the matter is remanded to the respondent Assessing Officer for fresh consideration. The respondent Assessing Officer is directed to fix a date for personal hearing within a period of 15 days from the date of receipt of a copy of this order. The Assessing Officer is further directed to hear the petitioner, peruse the documents and allow the petitioner to peruse the documents and invoice wise purchase list of the other end dealers stated to be available with the Assessing Officer and if necessary, give reasonable time for the petitioner to submit additional objection and thereafter complete the assessment by passing a reasoned order on merits and in accordance with law. The said order shall be passed within a period of 30 days from the date on which the personal hearing is conducted.

14. In the light of the orders passed in W.P.(MD)Nos.5086, 8574, 8580, 8586 and 8615 of 2017, the Writ Petitions in W.P.(MD) Nos.9820 to 9823 of 2017 are allowed and the impugned Demand Notices are set aside with liberty to the respondent to proceed in accordance with law subject to the fresh Assessment Orders to be passed in terms of the above mentioned direction.

15. In the light of the fact that we have allowed the Writ Petitions, the Writ Appeals in W.A.(MD)Nos.859 to 862 of 2017 are closed. However, there is no order as to cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(co)

/True copy/



To

1.The Secretary to Government,
The State of Tamil Nadu,
Department of Commercial Taxes And Registration Department,
Fort St. George, Beach Road, Chennai-60 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk, Chennai-600 005.

3.The Commercial Tax Officer (FAC)
C.T.Buildings, Ettayapuram Road,
Kovilpatty - 628 501, Tuticorin District.

+6ccs to M/S.MOHAMED IBRAHIM, Advocate SR.Nos.62772 to 62774

+13ccs to Special Government Pleader, SR.Nos.63239 to 63251

MR

MAS/JC/SAR1:23.08.2017:11P-11C

COMMON JUDGMENT MADE IN
W.A.[MD].Nos.859 to 862 of 2017 and
W.P.[MD]Nos. 5086, 8574, 8580, 8586,
8615 and 9820 to 9823 of 2017
29.06.2017