IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.6259 to 6263 of 2018
and W.M.P.Nos.7749 to 7753 of 2018

Sapphire Corporation,
Rep. by its Partner,
New No.88-89, Perambur Barracks Road,
Purasaiwakkam, Chennai-600 007. ... Petitioner in all W.Ps.

Vs.

1.The Commercial Tax Officer, Group-VI,
Enforcement (Central) Wing,
Greams Road CT Building,
Greams Road, Chennai-600 006.

2.The Assistant Commissioner (ST),
Choolai Assessment Circle,
Palaniappa Maligai, 2nd Floor,
No.10, Greams Road, Chennai-600 006. ... Respondents in all W.Ps.

Prayer in W.P.No.6259 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in Tin : 33870500909/2011-12 dated 26.02.2018 and to quash the levy of tax and penalty as far as alleged defect in item [1], [3] & [4] is concerned, as the assessment was made on the basis of mismatch with reference to the particulars gathered from the Departmental website, without following the guidelines/procedures laid down in the decision of this Hon'ble Court in the case of JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, reported in [2017] 99 VST 343 (Mad), without considering the contentions of the petitioner and in gross violation of principles of natural justice.

Prayer in W.P.No.6260 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in TIN : 33870500909/2012-13 dated 26.02.2018 and to quash the levy of tax and penalty as far as alleged defect in item [1], [2] & [4] is concerned, as the assessment was made on the basis of mismatch with reference to the particulars gathered from the

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Departmental website, without following the guidelines/procedures laid down in the decision of this Hon'ble Court in the case of JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, reported in [2017] 99 VST 343 (Mad), without considering the contentions of the petitioner and in gross violation of principles of natural justice.

Prayer in W.P.No.6261 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in TIN : 33870500909/2013-14 dated 21.02.2018 and to quash the levy of tax and penalty as far as alleged defect in item [1], [2] & [4] is concerned, as the assessment was made on the basis of mismatch with reference to the particulars gathered from the Departmental website, without following the guidelines/procedures laid down in the decision of this Hon'ble Court in the case of JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, reported in [2017] 99 VST 343 (Mad), without considering the contentions of the petitioner and in gross violation of principles of natural justice.

Prayer in W.P.No.6262 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in TIN : 33870500909/2014-15 dated 21.02.2018 and to quash the levy of tax and penalty as far as alleged defect in item [1], [2] & [4] is concerned, as the assessment was made on the basis of mismatch with reference to the particulars gathered from the Departmental website, without following the guidelines/procedures laid down in the decision of this Hon'ble Court in the case of JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, reported in [2017] 99 VST 343 (Mad), without considering the contentions of the petitioner and in gross violation of principles of natural justice.

Prayer in W.P.No.6263 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in TIN : 33870500909/2015-16 dated 21.02.2018 and to quash the levy of tax and penalty as far as alleged defect in item [1], [2] & [4] is concerned, as the assessment was made on the basis of mismatch with reference to the particulars gathered from the Departmental website, without following the guidelines/procedures laid down in the decision of this Hon'ble Court in the case of JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, reported in [2017] 99 VST 343 (Mad), without considering the contentions of

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the petitioner and in gross violation of principles of natural justice.

For Petitioner : Mr.Md.Ghafoor Ur Rahman
(in all W.Ps.)

For Respondents: Mrs.G.Dhanamadhri,
(in all W.Ps) Government Advocate (Taxes)

COMMON ORDER

Heard Mr.Md.Ghafoor Ur Rahman, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondents. With consent on either side, these writ petitions are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") and the Central Sales Tax Act, 1956, has filed these writ petitions challenging the assessment orders under the TNVAT Act for the assessment years 2011-12 to 2015-16.

3. The petitioner has approached this Court by way of these writ petitions primarily on the ground that they did not have effective opportunity to produce the necessary documents and whatever documents furnished were not perused in a proper manner by the Assessing Officer before completing the assessment. The petitioner's contention was that they have produced the original purchase bills and original sales bills, etc. the learned Government Advocate states that the Assessing Officer has gone by the records emphatically and stated that the necessary documents were not produced. Therefore, to ascertain the correct factual position, Mr.Mohamed Abdul Kader, the partner of the petitioner company and Mr.Kumar, the Assessing Officer, were directed to appear before this Court on 28.04.2018. The Assessing Officer was also directed to produce the original assessment file pertaining to the assessment year concerned. The Assessing Officer is present before this Court with the original assessment file.

4. On perusal of the said file, it is seen that it is a voluminous file. The first document in the file is the proposal of the Enforcement (Central) dated 07.04.2017, which includes the statement recorded from Mr.Mohamed Abdul Kader. The second document is the notice issued by the Assessing Officer dated 29.08.2017. The next document is the representation given by the petitioner dated 28.09.2017 in response to the revision notice. In the said representation, the petitioner has requested 60 days time to enable them to verify the records as

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to the correctness of the particulars furnished, as there were more than 10,000 invoices and they will file their objections. Accordingly, on 20.10.2017, objections were filed, wherein once again the petitioner sought for certain details. After receiving the representation, the second respondent has issued notice dated 25.10.2017, calling upon the petitioner to produce copies of purchase bills, details payment along with proof of payment of taxes and copies of balance sheet with Form WW report. The rest of the file contains purchase details from other dealers Annexure II, dealer profile details and copies of the returns in Form I with Annexures I & II for the relevant year and ledger account in respect of purchase and sale for the relevant year. Thus, the original file does not contain the original purchase bills and the original sales bills, etc., and therefore, the second respondent is right in stating that the assessee has not produced those documents.

5. The partner of the petitioner, who is present in Court submits that the documents are voluminous and they are ready and willing to produce all the documents before the Assessing Officer to complete the assessment in a proper manner. The Assessing Officer is also willing to examine all the records scrupulously and take a decision in respect of all the assessment years.

6. In the light of the above, these writ petitions are allowed, the impugned proceedings are set aside and the matters are remanded back to the second respondent for fresh consideration. The petitioner shall appear before the second respondent on 03.05.2018, along with all the original purchase bills and sales bills etc. The second respondent shall depute one of his officers to verify all those documents and if any further documents are required, sufficient time may be given to the petitioner to produce the same. After production of the same, if there is a need to submit further objections, the petitioner is at liberty to do so. After providing effective personal hearing, the second respondent shall redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

abr

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1.The Commercial Tax Officer, Group-VI,
Enforcement (Central) Wing,
Greams Road CT Building,
Greams Road, Chennai-600 006.

2.The Assistant Commissioner (ST),
Choolai Assessment Circle,
Palaniappa Maligai, 2nd Floor,
No.10, Greams Road, Chennai-600 006.

+1cc to Mr.Md.Ghafoor Ur Rahman, Advocate SR.No.32884
+1cc to Special Government Pleader SR.No.32688

RV(CO)
sm:16.5.2018

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