IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31554, 31555, 31560, 31565, 31571, 31574 & 31578 of 2018
and
WMP.Nos.36769, 36772, 36790, 36782, 36801, 36799 & 36795 of 2018

M/s.GKS Industries
No.31A/3, Sidco Industrial Estate
North Phase, Ambattur
Chennai-600 098, ..Petitioner (in all WPs)

Vs

The Assistant Commissioner (ST)
Patravakkam Assessment Circle
No.127, 2nd Floor, Yadhaval Street,
Padi, Chennai-600 050. ..Respondent (in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned order in TIN/33101360122/2007-2008, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 & 2016-2017 dated 12.01.2018 from the files of the respondent herein and quash the same.

For Petitioners: Mrs.Aparna Nandakumar (in all Wps)

For Respondent : Mrs.G.Dhana Madhri Government Advocate (in all WPs)

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondent. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. These writ petitions are filed challenging the orders of assessment dated 12.01.2018 passed in respect of the assessment years 2007-2008, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017.

3. Mrs.Aparna Nandakumar, learned counsel for the petitioner submitted that the petitioner has admitted the tax liability and paid the same at the time of inspection by the Enforcement Officials insofar as assessment years 2007-2008, 2011-2012, 2012-2013 and 2013-2014 and that the petitioner is not disputing such tax liability and however, the present writ petitions filed in respect of the assessment years 2007-2008, 2011-2012, 2012-2013 and 2013-2014 only against the imposition of penalty. She further contended that in respect of the assessment years 2014-2015, 2015-2016 and 2016-2017, the petitioner is disputing the tax liability arising out of mis-match issue and also imposition of penalty on the reason that the said issue was not dealt with by the Assessing Officer by following the guidelines/directions issued by this Court in a reported decision in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). She further contended that the imposition of penalty in all these cases cannot be sustained in the absence of any finding rendered by the Assessing Officer, by recording his satisfaction that the escapement of the tax was due to willful non-disclosure of the turn over by the petitioner. In support of such contention, the learned counsel relied on a decision made in WP.No.14255 & 14256 of 2018 dated 13.06.2018. Insofar as the finding rendered by the Assessing Officer regarding non-reply to the notices of proposal is concerned, the learned counsel contended that the Accountant, who was dealing with the matter, had fallen sick and met with an accident subsequently and therefore, the petitioner was reasonably prevented from making any effective reply.

4. Per contra, the learned Government Advocate submitted that first of all, the petitioner has not filed any reply to the notices proposal and therefore, they are not entitled to seek any indulgence from this Court. Secondly, she contended that in respect of the assessment years 2014-2015, 2015-2016 and 2016-2017, the mis-match issue was not the only issue and there are other issues. Insofar as the contention raised against imposition of penalty is concerned, the learned Government Advocate submitted that while imposing penalty under Section 27 (4) of the Tamil Nadu Value Added Tax Act, 2006, the Authority need not record any satisfaction regarding willful non-disclosure of the turn over by the Assessee.

5. Heard both sides.

6. In all these writ petitions, the petitioner questions the imposition of penalty on the ground that the Assessing Officer has failed to record any reasons and his satisfaction that the escapement of tax was due to non-disclosure of the turn over by the Assessee. It is contended that in the absence of such

finding, the penalty, as a matter of routine, cannot be imposed. It is true that the petitioner has admitted the tax liability and paid the same before the Inspecting Officials in respect of the assessment years 2007-2008, 2011-2012, 2012-2013 and 2013-2014. Thereafter, the Assessing Officer has chosen to issue the notices of proposal for imposing penalty. In the said notices of proposal, the Assessing Officer informed the petitioner that they can avail the opportunity of personal hearing within the time stipulated in the show cause notice on any day. Therefore, it is evident that the Assessing Officer has not indicated the exact date of personal hearing to the petitioner. It is true that the petitioner did not file any reply to the notices of proposal. At the same time, the perusal of the orders of assessment would show that the Assessing Officer has simply imposed the penalty only on the reason that the petitioner did not file any reply, without recording his satisfaction that the escapement of tax was due to willful non-disclosure of the turn over by the petitioner. At this juncture, it is useful to refer the order passed by this Court in WP.Nos.14255 & 14256 of 2018 dated 13.06.2018, wherein, at Paragraph No.4, the learned Judge has observed as follows:

> "4. In the show cause notices dated 15.9.2017, the respondent ought to have put the petitioner on notice that despite the petitioner paying the tax even at the time of inspection, the non disclosure alleged against the petitioner was wilful. In the absence of such a specific observation, the notices proposing levy of penalty under Section 27(4) of the said Act have to be held to be defective. This Court took such a view in the case of M/s.Saravana Super Market, Vandavasi Vs. CTO, Vandavasi, Tiruvannamali District [W.P.Nos. 35019 and 35020 of 2016 dated 01.12.2016]. Thus, the conduct of the petitioner in paying the tax even at the time of inspection prior to issuance of the show cause notices can very well be taken as a factor for not imposing penalty on the petitioner. That apart, the respondent has not recorded his satisfaction that escapement of tax was due to wilful non disclosure by the assessee."

7. Therefore, it is clear that the Assessing Officer, if chooses to impose penalty, should specifically record his satisfaction in the order of assessment that the escapement of tax is due to willful non-disclosure of the turn over by the Assessee, since the order of assessment is being passed by way of quasi judicial proceedings and therefore, such orders should

contain reasons justifying the conclusions. Therefore, this Court is inclined to set aside the impugned orders passed in respect of penalty in all the assessment years and remit the matter back to the Assessing Officer for reconsidering the issue once again, after receiving the reply from the petitioner.

8. Insofar as the assessment years 2014-2015, 2015-2016 & 2016-2017 are concerned, it is not in dispute that one of the issue considered in those assessment years is mis-match issue and that the said issue was considered in JKM Graphics Solutions case, wherein this Court has issued certain guidelines/directions to the Assessing Officer as to how such issue has to be dealt with. I find that the Assessing Officer in this case has not dealt with the said issue as per the directions issued by this Court in JKM Graphics Solutions case, especially, when these assessment orders were passed after the pronouncement of the order passed in JKM Graphics Solutions case. Further, as it is submitted before this Court by the learned counsel for the petitioner that in respect of other issues for these three assessment years, the petitioner is not disputing their liability, it is for the petitioner to make the payment of tax arising out of those issues, if no such payment is made so far. However, in respect of the mis-match issue, the matter has to go back to the Assessing Officer to re-consider the said issue once again in respect of the assessment years 2014-2015, 2015-2016 and 2016-2017, by following the guidelines/directions issued in JKM Graphics Solutions case.

9. Considering all these aspects, WP Nos.31554, 31555, 31560 & 31565 of 2018 are allowed and the impugned orders of assessment, imposing penalty are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment only in respect of penalty, as the petitioner has admitted the tax liability in these cases. The petitioner is directed to furnish their reply to the notices of proposal within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the Assessing Officer shall give a personal hearing to the petitioner and pass fresh orders of assessment on the question of penalty within a period of four weeks thereafter.

10. WP.Nos.31571, 31574 & 31578 of 2018 are allowed in part and the impugned orders of assessment dealing with mis-match issue and penalty alone are set aside. Consequently, the matters are remitted back to the Assessing Officer to redo the assessments only in respect of mis-match issue and penalty, by following the guidelines/directions issued in JKM Graphics

Solutions case, subject to the condition that the petitioner pays 15% of the tax liability in each assessment year, (viz., 2014-2015, 2015-2016 & 2016-2017) within a period of two weeks from the date of receipt of a copy of this order, along with their reply to the notices of proposal On receipt of such payment of 15% of the tax liability as stated supra, along with the reply, the Assessing Officer shall redo the assessment, by considering the mis-match issue as well as penalty issue and pass orders of assessment within a period of twelve weeks from the date of receipt of a copy of this order, after giving due opportunity of personal hearing to the petitioner. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
Patravakkam Assessment Circle
No.127, 2nd Floor, Yadhaval Street,
Padi, Chennai-600 050.

+1cc to Mr.Aparna Nandakumar, S.R.No.82449
+1cc to the Special Government Pleader, S.R.No.82713

W.P.Nos.31554, 31555, 31560,
31565, 31571, 31574
& 31578 of 2018

RSV(CO)

rrs 04/12/2018