



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) Nos.10018 to 10022 of 2018

and

W.M.P. (MD) Nos.9157 to 9161 of 2018

M/s.Cauvery Electronics,
Rep. by its Partner
K.Samyappan

.. Petitioner in all petitions

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal Secretary / Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Karur South Assessment Circle,
Commercial Tax Buildings,
Karur.

.. Respondents in all petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARIFIED MANDAMUS, calling for the records in TIN33753681120/2011-12; TIN33753681120/2012-13; TIN33753681120/2013-14; TIN33753681120/2014-15; and TIN33753681120/2015-16, respectively, dated 14.03.2018, issued by the second respondent and quash the same as arbitrary, illegal, without jurisdiction, clear violation of the circular issued by the first respondent in Circular No.1 of 2009 in D3/44968/2009 dated 30.11.2009, against the Judgment of the Hon'ble Apex Court in the case of M/s.Southern Motors v. State of Karnataka, reported in (2017) 3 SCC 467 and direct the respondents to furnish the copies of the invoices as referred by them in the pre revision notices dated 30.01.2018 and 01.03.2018 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of writ petitions in the case of M/s.JKM Solutions Private Limited, reported in 2017 (99) VST 343 (Mad), including the opportunity of personal hearing within such time as may be directed by this Hon'ble Court.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.R.Murugan,

Additional Government Pleader
(In all petitions)

**COMMON ORDER**

These writ petitions are directed against the proceedings of the second respondent in TIN33753681120/2011-12 to 2015-16, respectively, dated 14.03.2018, in and by which, revised assessment orders came to be passed by the second respondent. The petitioner also sought for a direction to the second respondent to furnish the copies of the invoices as referred by them in the pre-revision notices, dated 30.01.2018 and 01.03.2018 and pass fresh assessment orders, in accordance with law.

2. As the issue involved in all these petitions is similar in nature, they are disposed of by way of this common order.

3. The petitioner before this Court is a dealer in Home appliances and an assessee on the file of the second respondent. The subject assessment years are 2011-12 to 2015-16, for which, the petitioner filed their returns, on time and the same was also accepted by the second respondent. Such being so, based on an inspection report, the second respondent issued pre-revision notices dated 30.01.2018 and 01.03.2018, citing some discrepancies and thereby, proposed to revise the assessments for the subject assessment years. According to the petitioner, the second respondent had not furnished the web report and other particulars, which was referred to in their pre-revision notices. Therefore, the petitioner was not able to verify the transactions and make their reply on time. Moreover, the accountant of the petitioner had also approached the second respondent seeking the web report and other particulars. In the meantime, the impugned orders revising the assessments came to be passed, thereby, input tax credit (ITC) came to be reversed and hence, the present writ petitions came to be filed.

4. Relying upon a decision of this Court reported in **[2017] 99 VST 343 (Mad)**, in the case of **JKM Graphics Solutions Pvt., Ltd., v. Commercial Tax Officer, Vepery Assessment Circle, Chennai, decided on 01.03.2017**, the learned Counsel for the petitioner contended that the pre-revision notices are bereft of requisite particulars, in the absence of which, proper objection could not be submitted.

5. Even on merits, learned Counsel for the petitioner would submit that one of the limbs of the impugned proceedings is that reversal of ITC due to mismatch of particulars as found in the Annexure of the selling dealer with that of the Annexure of the purchasing dealer. When the petitioner, being the purchasing dealer has rightly disclosed the ITC particulars, in the event of non-disclosure of such sales effected by the selling dealer, action would lie only against such defaulting seller and not against the purchaser, ie., the petitioner. In support of the same, learned Counsel for the petitioner would rely on the



decision of a Division Bench of this Court reported in **[2017] 99 VST 341 (Mad)**, in the case of **Assistant Commissioner (CT), Kolathur, Chennai v. Infiniti Wholesale Ltd., decided on 09.09.2016.**

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6. Learned Additional Government Pleader, on instructions, would submit that the petitioner was issued with two pre-revision notices, dated 30.01.2018 and 01.03.2018, granting time to the petitioner for making their written objections as well as directing them to appear for personal hearing on 16.02.2018 and 12.03.2018, respectively. But, the petitioner did not respond for either of the notices. Therefore, the authority concerned, having left with no other option, has recorded this fact and proceeded with the matter. Hence, it cannot be presumed as a violation of principles of natural justice.

7. With regard to the contention of the petitioner on the merits of the case, the learned Additional Government Pleader contended that these are all factual disputes, which has to be agitated before the appropriate authority. Therefore, the petitioner ought to have preferred an appeal before the appellate authority, instead of filing these writ petitions. Hence, he prayed for dismissing the writ petitions.

8. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

9. On a perusal of the show cause notices, it is seen that they were bereft of particulars regarding the name and/or trade identification number (TIN) number of the dealer at the other hand. It is stated that cross verification of buyer and seller as per Annexure I is made through Web. But, web report was not enclosed. Unless the intranet web report along with all details are furnished, the purchaser would not be in a position to reconcile the mismatch.

10. In cases of mismatch, as per the Circular of the Commissioner of Commercial Taxes in Circular No.10 of 2015 dated 01.04.2015, the Assessing Officers are directed to enclose full particulars, invoice-wise, either in printed form or CD or email. For better appreciation, clause (a) & (b) of the Circular dated 01.04.2015 are extracted thus:

"(a) in case of return mismatch-based notices, invoice-wise data of mismatches for each demand must be mandatorily attached to the notice either in print form or as a CD or send as an email; and

(b) the fact of enclosing such mismatch transaction data shall be clearly mentioned entered in the notice and acknowledgement receipt obtained."



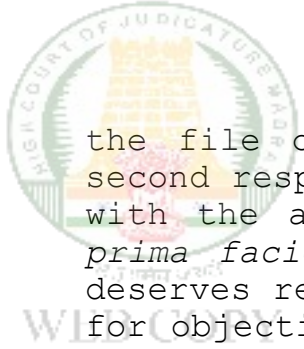
11. This aspect has been elaborately discussed by a learned Single Judge of this Court in the decision relied on by the learned Counsel for the petitioner in **[2017] 99 VST 343 (Mad)** (cited supra). Other than this, in cases of mismatch, in the said decision, this Court has also elaborately discussed about the procedure to be followed by the Assessing Officer. For better appreciation, the same is extracted thus:

"... In cases where mismatch occurs, it is a starting point for an enquiry. The first phase of enquiry should be at the Department level, as in most cases, both the dealers are registered in different assessment circles. The Court has come across cases, where such mechanically drafted show-cause notices have been sent by assessing officers without embarking upon any enquiry, even though the other end dealer is also registered within his jurisdiction. Thus, when the assessing officer has data to show that the dealers registered with him, whose returns have been accepted when compared to the other end dealer does not match, then the assessing officer is first required to enquire with the assessing officer of the other end dealer to make verifications as to whether the mismatch could have occurred due to any one of the factors, which may not be due to the deliberate default of the dealer, satisfy himself that and after such verification, if prima facie appears that the returns to be revised, at that stage, the assessing officer would be entitled to issue a show-cause notice containing full particulars and clearly stating as to what was the scope of enquiry done by him and why he is of the prima facie view that the dealer has failed to file proper returns or suppressed information. It is only then the dealer would be in a position to put forth his defence and demonstrate as to how this prima facie view is without any basis."

12. It is very unfortunate that neither the Circular issued by the Commissioner of Commercial Taxes nor the procedures, which were elaborately discussed in **[2017] 99 VST 343 (Mad)** (cited supra), were scrupulously followed by the Assessing Officer in the present case on hand.

13. As rightly contended by the learned Additional Government Pleader, factual disputes have to be agitated before the appropriate authority, but, what has been questioned in these writ petitions is the manner in which the impugned proceedings came to be passed. Since the same has been answered in favour of the petitioner, this Court is of the view that the impugned orders have to be quashed and the matter deserves fresh consideration.

14. Accordingly, the impugned orders passed by the second respondent in TIN33753681120/2011-12 to 2015-16, respectively, dated 14.03.2018 are set aside and the matter is remitted back to



the file of the second respondent for fresh consideration. The second respondent shall conduct a thorough enquiry in consultation with the assessing officers of the other end dealer and if he, *prima facie*, is of the view that the returns of the petitioner deserves revision, then he has to issue show cause notice, calling for objections. Needless to say that the show cause notice, to be issued by the second respondent, has to include all the particulars, invoice-wise details, including reasons, as per the Circular issued by the Commissioner of Commercial Taxes in Circular No.10 of 2015 dated 01.04.2015, keeping in mind the decision in **[2017] 99 VST 343 (Mad)** (cited supra). Thereafter, opportunity of personal hearing should be afforded to the petitioner, followed by which, the respondent shall pass appropriate orders, on merits and in accordance with law. The second respondent shall complete the entire exercise within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner is dragging on the proceedings, by adapting delay tactics, it is open to the second respondent to record the same and proceed further in the manner known to law.

15. With the above observations and directions, all the writ petitions are allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS-I)

To

- 1.The Commissioner of Commercial Taxes,
Office of the Principal Secretary / Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.
- 2.The Commercial Tax Officer,
Karur South Assessment Circle,
Commercial Tax Buildings, Karur.

+2 CC To MR.S.KARUNAKAR, Advocate SR. NO. 88485
+1 CC TO The Special Government Pleader SR.NO. 88867

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