BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.10.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)Nos.20577 to 20580 of 2018
and
W.M.P.(MD)Nos.18322 to 18325 of 2018

Sree Baba Fabrics
Rep. by its proprietor
K.Sadasivam .. Petitioner in all WPs

Vs.

The Assistant Commissioner (ST),
Karur (West) Circle,
Karur. .. Respondent in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the orders of the respondent dated 23.03.2018 in TIN: 33653783316 / 2011-12 to 2014-15, respectively, and quash the same.

For Petitioner : Mr.V.Vijayshankar
For Respondent : Mr.D.Muruganantham,
Additional Government Pleader
(In all WPs)

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COMMON ORDER

These writ petitions are directed against the impugned orders passed by the respondent in TIN: 33653783316 / 2011-12 to 2014-15, respectively, dated 23.03.2018, vide which, revised assessment orders, reversing the Input Tax Credit of the petitioner, came to be passed.

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

3. The petitioner before this Court is a dealer in fabrics and garments and an assessee on the file of the respondent herein. The subject assessment years are 2011-12 to 2014-15, for which, the petitioner filed their returns, on time and they were deemed to have been assessed in view of Section 22(2) of the TNVAT Act. However, on the basis of the inspection report and further scrutiny of web reports, the authorities found some mismatch between the Annexure I and Annexure II of seller and buyer end returns. Pursuant to the same, the respondent has issued pre-revision notice for the subject assessment years on 25.01.2018, but, the web report and other particulars, on the basis of which

the respondent arrived at such mismatch were not enclosed in the said show cause notice. 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. Despite the same, the petitioner has made a detailed representation on 09.02.2018, narrating all the facts and materials. However, without properly considering the same and without providing an opportunity of personal hearing to the petitioner, the present impugned orders came to be passed and therefore, the learned Counsel for the petitioner prays for allowing the present writ petitions.

4. Learned Additional Government Pleader appearing for the respondent, on the other hand, would submit that the petitioner was issued with show cause notices dated 25.01.2018, for which, the petitioner also responded, by way of objection cum representation dated 12.02.2018. After considering the same, the respondent has proceeded with the matter and passed the impugned orders dated 23.03.2018. Therefore, he prays for dismissal of the present writ petitions.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. It is not in dispute that the petitioner was served with pre-revision notices dated 25.01.2018, inviting objections and the petitioner has also responded by way of reply dated 12.02.2018. This Court has perused the said pre-revision notices dated 25.01.2018. It is seen that one of the grounds raised in the pre-revision notices, as confirmed in the final impugned orders, is with regard to mismatch of particulars between Annexure I and Annexure II of seller and buyer end. But, it is seen that the show cause notice is 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 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.

7. 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."

8. 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."

9. 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.

10. In such a view of the matter, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned orders passed by the respondent in TIN: 33653783816 / 2011-12 to 2014-15, respectively, dated 23.03.2018 are set aside and the matter is remitted back for fresh

consideration. The 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 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 and also 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 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 respondent to record the same and proceed further in the manner known to law.

11. With the above observations and directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Assistant Commissioner (ST),
Karur (West) Circle,
Karur.

+4cc to Mr.A.Srinivasan,Advocate Sr.No.93283
+1cc to The Spl. Government Pleader Sr.No.93363

GK

NM/RP/SAR1/28.11.2018/4P/7C

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