IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :20.06.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.Nos.2619, 2621, 2622, 2623 & 2625 of 2019
and
W.M.P.Nos.2890, 2891, 2894, 2896 & 2897 of 2019

M/s.Indira Industries
Rep.by its Manager Finance
G.Mugunathan
No.3, SIDCO Industrial Estate
Gandhi Nagar, Vellore,
Tamil Nadu - 632 006

..Petitioner in all W.Ps

vs

The State Tax Officer,
Guidyatham East.

..Respondent in all W.Ps

Prayer in W.P.No.2619 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the respondent in TIN.33634240779/2011-12 and quash the order dt.31.12.2018 passed therein and pass any such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer in W.P.No.2621 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the respondent in TIN.33634240779/2012-13 and quash the order dt.31.12.2018 passed therein and pass any such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer in W.P.No.2622 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the respondent in TIN.33634240779/2013-14 and quash the order dt.31.12.2018 passed therein and pass any such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer in W.P.No.2623 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the respondent in

TIN.33634240779/2014-15 and quash the order dt.31.12.2018 passed therein and pass any such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer in W.P.No.2625 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the respondent in TIN.33634240779/2015-16 and quash the order dt.31.12.2018 passed therein and pass any such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Ms.Hema Muralikrishnan
(in all W.Ps)

For Respondent : Mr.M.Hariharan
Additional Government Pleader
(in all W.Ps)

C O M M O N O R D E R

This common order will dispose of these five writ petitions.

2. Sole writ petitioner and the lone official respondent in all these five writ petitions are the same. Ms.Hema MuraliKrishnan, learned counsel on record for the sole writ petitioner in all these five writ petitions and Mr.M.Hariharan, learned Additional Government Pleader on behalf of the lone official respondent in all these five writ petitions are before this Court.

3. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

4. This Court is informed by both sides in unison that the factual matrix out of which of these five writ petitions are similar. It is also further submitted by both learned counsel that the Central theme / core issue in all these five writ petitions is one and the same. The difference being five successive assessment years and obviously, the numerical values pertaining to those assessment years. Five assessment years, which form subject matter of these five writ petitions are 2011-2012 to 2015-2016. All these five writ petitions arise under the 'Tamil Nadu Value Added Tax Act, 2006' ['TNVAT Act' for the sake of brevity].

5. Short facts imperative for appreciating this order are as follows:

a) Writ petitioner, is in the business of dealing in Aluminium conductors, nuts, bolts, screws and fasteners, etc., Writ petitioner is a dealer within the meaning of TNVAT Act.

b) Writ petitioner has been filing monthly returns under Section 21 of TNVAT Act and there has been deemed assessment under Section 22(2) of TNVAT Act.

c) The business premises of the writ petitioner was inspected by the Enforcement Wing officers of the respondent Department and certain discrepancies were noticed.

d) Suffice to say that the discrepancies broadly fall under two heads and those two heads are ITC claims and mismatch qua purchases.

e) Collecting material from the website, the respondent embarked upon the exercise of comparing the sale details i.e., Annexure-II of the sellers of the writ petitioner with the purchase details of the writ petitioner being Annexure-I.

f) The respondent, issued notice to the writ petitioner regarding proposed revised assessment based on the proposal given by the Enforcement Wing and thereafter, the impugned orders came to be passed.

g) Alleging that the impugned orders are in violation of what has now come to stay as JKM Graphics principle and based on the principle laid down by this Court in M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6 reported in (2017) 99 VST 343(Mad), instant writ petitions have been filed.

6. Learned counsel for writ petitioner, submitted that post inspection by the Enforcement Wing, respondent collected material from the website.

7. It was pointed out that out of these five writ petitions, with regard to one writ petition i.e., W.P.No.2623 of 2019 pertaining to assessment year 2014-2015 alone, the details have been collected from the data available in the check post. It was submitted that without following the JKM Graphics principles of calling for details and co-relating the same before embarking upon the exercise of making a revised assessment, impugned orders have been passed.

8. There is no disputation or disagreement before this Court that JKM Graphics principle rendered by a Hon'ble Single Judge of this Court has not been carried in appeal by any of the parties. In other words, there is no intra court appeal against JKM Graphics principle.

9. On the contrary, it is the stated position of Revenue that they will be submitting a new procedure / Centralized mechanism pursuant to the recommendations made by learned Single Judge in JKM Graphics case.

10. Most relevant paragraph in JKM Graphics in this regard is paragraph 56 and the same reads as follows:

> '56. The procedure adopted under the Maharastra 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 calling upon 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.'

11. In the light of the aforesaid undisputed position that emerged in the hearing today, it follows as an inevitable sequitur that the writ petitioner is entitled to have the impugned orders set aside on the ground that it is in violation of JKM Graphics principle.

12. In the light of the narrative thus far, this Court passes the following order:

a) Impugned orders being TIN.33634240779/2011-12, TIN.33634240779/2012-13, TIN.33634240779/2013-14, TIN.33634240779/2014-15, TIN.33634240779/2015-16 dated 31.12.2018 are set aside. To be noted, impugned orders are set aside solely on the ground of violation of JKM Graphics Principle and this Court does not express any opinion on the merits of the matter.

b) After submission of new methodology / module for assessment before the Hon'ble Court concerned [this Court is informed that the same is in the anvil], Respondent shall make assessment afresh. Obviously such assessment shall be passed, after final orders being passed by Hon'ble Court concerned pursuant to the new model under JKM Graphics principles.

d) After orders being passed by this Hon'ble Court, redoing of assessment afresh shall be done as expeditiously as possible.

e) Assessment order after being passed afresh shall be communicated to the writ petitioner in accordance with applicable Rules, under due acknowledgment.

13. All the five writ petitions are disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,
Guidyatham East.

+1cc to Mr.B.Raveendran, Advocate sr.50693

W.P.Nos.2619, 2621, 2622,
2623 & 2625 of 2019
and
W.M.P.Nos.2897, 2896, 2894,
2891 & 2890 of 2019

nr 22/08/2019