IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 12.07.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.5529 and 5531 of 2019
&
W.M.P.Nos.6293 and 6295 of 2019

J.P.Agencies
Rep. By its Proprietor
S.Edwin
Door No.27/32, Railway Border
2nd Street, Kaveri Nagar, Saidapet
Chennai - 600 015 .. Petitioner in both W.Ps.

Vs.

Assistant Commissioner (ST)
Saidapet Assessment Circle
No.1, Greams Road
Chennai - 600 006 .. Respondents in both W.Ps

Common Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN:33536223126/2014-15 and TIN:33536223126/2015-16 dated 31.12.2018 and quash the same and further direct the respondent to redo the assessment in line with the guidelines framed by the Hon'ble Court on mismatch issued in the matter of M/s.JKM Graphic Solutions Private Limited Vs. Commercial Tax Officer, since reported in 99 VST 243 and also as per the administrative circular dated 18.01.2019.

For Petitioner : Ms.Aparna Nandakumar for
M/s.N.Murali

For Respondents: Mr.G.Dhanamadhri
Government Advocate (Taxes)

COMMON ORDER

Ms.Aparna Nandakumar, learned counsel representing the counsel on record for writ petitioner in both these writ petitions and Ms.Dhanamadhri, learned Government Advocate on behalf of lone respondent in both these writ petitions are before this Court.

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

3.It is not necessary to set out factual matrix in great detail as it is submitted by both learned counsel without any disputation or disagreement that the instant writ petitions are covered by an earlier order of this Court being order dated 20.06.2019 made in W.P.No.16242 of 2019.

4.Short facts shorn of elaboration are to the effect that writ petitioner is a dealer under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity, writ petitioner is a trader in automobile spares and writ petitioner had purchased goods from local registered dealers, who are registered under TNVAT Act.

5.Instant writ petitions pertain to two Assessment Years, namely 2014-15 and 2015-16. Suffice to say that the business premises of the writ petitioner was inspected by Enforcement Wing officials, certain defects were noticed, proposals were made by Enforcement Wing officials pursuant to which revisional notices were issued and revised Assessment Orders came to be passed for aforementioned two assessment years and these two revised Assessment Orders are the impugned orders in the two cases on hand.

6. Most relevant paragraph in aforesaid order dated 20.06.2019 made by this Court in W.P.No.16242 of 2019 are Paragraphs 4 to 9 and the same read as follows:

> 4. Taking this Court through the impugned order, learned counsel for writ petitioner submitted that respondent has held that writ petitioner has not reported purchases by taking into account the Annexure-II of writ petitioner's sellers being sale particulars of writ petitioner's sellers without following JKM graphics principle. To be noted, JKM principle is principle laid down in JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, reported in [2017] 99 VST 343 (Mad).
>
> 5. Learned counsel drew the attention of this Court to relevant paragraph in the impugned order, which reads as follows:
>
> 'On verification of the returns filed by them for the year 2015-16, it is noticed that the dealer have effected purchases of Rs.19,32,968/- and paid the tax of Rs.1,01,835/- for the assessment year 2015-16, which is ascertained from the inter-net website

certain purchases details taken from other dealer Annexure-II, for the year 2015-16. The dealer had not reported enure purchases in their monthly returns. The purchase omissions noticed as below.'

6. Thereafter taking this Court through the earlier order dated 13.06.2017 and the impugned order dated 07.06.2018, learned counsel also pointed out that first page in the aforesaid two orders are virtually adverbatim the same.

7. Responding to the above, learned State Counsel, who shall also be referred to as Revenue Counsel, very fairly submits that no writ appeal i.e., intra Court appeal has been preferred against JKM principle and State counsel submitted that the department, pursuant to JKM Graphics Solution case shall now be submitting a new centralised mechanism to be adopted as recommended by the learned single Judge in JKM Graphics Solution case.

8. This leads this Court to the inevitable sequitur that JKM principle now governing the field and the procedure of making assessment with regard to a dealer by relying on Annexure-II being sale particulars of dealer's sellers without adhering to requisite norms is incorrect besides being unsafe. Therefore, it follows as a further sequitur that writ petitioner is entitled to have the impugned order set aside on the ground that it is not inconformity with the order passed in the earlier round of litigation as besides being in violation of JKM principle.

9. Before concluding, this Court deems it appropriate to usefully extract Paragraph 56 of JKM principle 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.

7. As already alluded to supra, both learned counsel submitted without any disputation or disagreement that these two writ petitions are squarely covered by aforesaid order dated 20.06.2019 made in W.P.No.16242 of 2019. Therefore, an order which is in tune with and akin to the operative portion of the earlier order has to be passed in the instant cases also.

8. In this view of the matter i.e., the narrative thus far, the following common order is passed:

a) Two impugned orders, both dated 31.12.2018 bearing reference TIN:33536223126/2014-15 and TIN:33536223126/2015-16 are set aside;

b) After submission of new methodology/module for assessment before learned single Judge, which this Court is informed is in the anvil, respondent shall make assessments afresh. Obviously such assessments shall be after final orders being passed by Hon'ble single Judge pursuant to the new module in JKM Graphics Solutions case;

c) From the date of new module becoming operative, assessments afresh shall be completed within a period of three months;

d) Assessments made afresh in aforesaid manner shall be communicated to the writ petitioner under due acknowledgement in a manner known to law more particularly in accordance with applicable Rules in this regard under Rules under TNVAT Act.

These writ petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST)
Saidapet Assessment Circle
No.1, Greams Road
Chennai - 600 006

+1cc to Special Government Pleader sr.59664

W.P.Nos.5529 and 5531 of 2019 &
W.M.P.Nos.6293 and 6295 of 2019

rsv(co)
nr 22/08/2019