IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 07.06.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.7961 of 2019
&
W.P.Nos.8566 & 8570 of 2019

M/s.Suganthi Agency
Rep. By its Proprietor
No.19/34, Bajanaimada Street
Panruti - 607 106
Cuddalore District .. Petitioner

Vs.

The Deputy Commercial Tax Officer
Panruti Town Assessment Circle
Cuddalore District .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the connected records relating to the proceedings of the respondent herein made in TIN 33764481704/2012-13 dated 30.12.2016 and the consequential recovery proceedings and quash the same and consequently direct the respondent herein to redo the assessment for the year 2012-13 afresh after affording the opportunity of personal hearing to the petitioner herein.

For Petitioner : Mr.Manoharan Sundaram

For Respondent : Mr.M.Hariharan
Additional Government Pleader (T)

O R D E R

Mr.Manoharan Sundaram, learned counsel on record for writ petitioner and Mr.M.Hariharan, learned Additional Government Pleader on behalf of sole respondent are before this Court.

2.By consent of both learned counsel, the main writ petition itself is taken up, heard out and is being disposed of.

3.This writ petition arises under the 'Tamil Nadu Value Added Tax Act, 2006' (Tamil Nadu Act 32 of 2006), which shall hereinafter be referred to as 'TNVAT Act' for the sake of brevity, convenience and clarity.

4.Short facts that are imperative for appreciating this order, as can be culled out from the case file placed before this Court are that the writ petitioner is carrying on business in the name and style 'Suganthi Agency'. To be noted, though the cause title reads 'M/s.Suganthi Agency', from the submissions made before this Court, undisputed position that emerges is that one Mr.B.Baskaran, son of Mr.Balu Chettiar, Panruti, Cuddalore District was carrying on business in the name and style of 'Suganthi Agency' as sole Proprietor. This Court is informed that Sugnathi is Baskaran's Spouse name.

5.Be that as it may, suffice to say that the writ petitioner shall be construed as B.Baskaran, carrying on business in the name and style of 'Suganthi Agency' as its sole Proprietor. Writ petitioner was carrying on business by trading in groceries and other provision items. Writ petitioner was registered as a dealer / assessee under the TNVAT Act on the file of the sole respondent before this Court. Writ petitioner was filing monthly returns and the same was deemed to have been assessed inter alia under Section 22(2) of TNVAT Act.

6. When things stood as above, the respondent made certain comparison of the returns filed by the writ petitioner with details available in the websites of certain other entities / individuals, who according to the respondent, had business transactions with the writ petitioner. Based on the details available in the websites of other entities / individuals, there was a re-assessment of the writ petitioner's returns. Vide this assessment, the respondent held that there are discrepancies between Form.I returns filed by the writ petitioner and the web reports (purchase details from other dealers available in Annexure 2). On this basis, the assessment was made and total turnover of the writ petitioner for the Assessment year 2012-13 was determined to be Rs.46,88,689/- . It was held that the taxable turn over is Rs.43,06,866/- after excluding the turnover, which according to the respondent, was exempt. The respondent imposed a tax of Rs.5,89,382/. More importantly, penalty of Rs.8,84,073/- was also imposed. Aggrieved by the aforesaid Assessment Order dated 30.12.2016 bearing reference TIN 33764481704/2012-13, writ petitioner has filed the instant writ petition assailing the said Assessment Order, which shall hereinafter be referred as 'impugned order' for the sake of convenience and clarity.

7. Pursuant to the Assessment Order, it is not in dispute that a small piece of immovable property in the form of vacant land admeasuring 1200 sq.ft or thereabouts

belonging to the writ petitioner has been attached. It remains attached. Writ petitioner has averred that the Assessment Order and the pre-Assessment Orders were not served on the writ petitioner, but learned Revenue Counsel has produced the records of the respondent Department and attention of this Court was drawn to postal acknowledgement cards to demonstrate that the service has, in fact, been effected. However, it is seen from the records produced before this Court that the notices have been sent to the business address and the addressee/noticee as can be seen from the records is 'Suganthi Angency'. The postal acknowledgement cards show that the recipient is one B.Suganthi.

8. The writ petitioner disputes this and says that business itself was closed down and the business was not functioning at the address at No.19/34, Bajanaimada Theru, Panruti - 607 106 on the relevant dates. As these aspects turn heavily on facts, this Court refrains from expressing any opinion and going into these facts any further considering the position that this is a writ petition which is being decided on affidavit and counter affidavit. Also to be noted, in the light of the nature of the order which this Court now proposes to pass owing to the trajectory of the hearing today, it may not be necessary to advert to the details as to whether notices were, in fact, served on the petitioner or not.

9. Learned counsel for petitioner pressed into service a judgment made by a learned single Judge of this Court in M/s.JKM Graphics Solutions Private Limited [M/s.JKM Graphics Solutions Private Limited Vs.The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6]. This is an order made in a batch of writ petitions in W.P.No.105 of 2016 and the date of the order is 01.03.2017. The aforesaid order was pressed into service by the writ petitioner to buttress his submission that an assessment cannot be made by relying on the websites of suppliers of assessee or other entities. It was submitted that this is an unsafe method. A perusal of the case file reveals that besides lack of service of notice, the writ petition is primarily predicated on the ground of procedure adopted i.e., relying on the details in the websites and web portals of individuals/other entities. In this regard, attention of this Court was drawn to paragraph 56 of JKM Graphics Solutions Private Limited. This Court deems it appropriate to usefully extract Paragraph 56 of the said order 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.

10. Adverting to JKM Graphics Solutions Private Limited case, learned Revenue counsel very fairly submitted that no writ appeal i.e., intra-court appeal has been preferred against the order dated 01.03.2017 made in JKM Graphics Solutions Private Limited case. Learned Revenue Counsel also submitted that the Department, pursuant to JKM Graphics Solutions case, shall now be submitting a new procedure to be adopted as recommended by the learned single Judge in JKM Graphics Solutions. This leads us to the inevitable sequitur that JKM Graphics Solutions is now governing the field and the procedure of making an assessment with regard to an assessee by relying on details in the websites and web portals of other entities / individuals is incorrect besides being unsafe. Therefore, it follows as a further

sequitur that the writ petitioner is entitled to have the impugned order set aside on the ground that it is in violation of JKM Graphics Solutions Private Limited principle.

11. Be that as it may, as alluded to supra, immovable property belonging to the petitioner has been attached pursuant to the assessment. In the aforesaid backdrop, in the light of discussion and narrative supra, this Court passes the following order:

a) impugned order being order dated 30.12.2016 bearing reference TIN 33764481704/2012-13 is set aside;

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

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

d) Attachment of immovable property made vide proceedings dated 20.02.2013 shall continue to remain until adjudication and assessment afresh;

e) If the assessment is in favour of the writ petitioner/assessee, the attachment will stand raised automatically.

This writ petition is disposed of on above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

gpa

To

The Deputy Commercial Tax Officer
Panruti Town Assessment Circle
Cuddalore District

+1cc to Mr..Manoharan Sundaram , Advocate SR.No. 4592
+1 cc to Government Pleader Sr.No. 46544

A.SK(05/07/2019)