IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.7938 of 2019
and
W.M.P.No.8539 of 2019

M/s.Daksh Agencies
Represented by A.Rajendra Kumar,
Proprietor,
Earlier at Plot No.4-1, Phoenix Mall,
Chennai - 42,
Now at 169, Mint Street,
Sowcarpet, Chennai - 79. ..Petitioner

vs

1.The Commercial Tax Officer,
Anna Salai assessment Circle,
Chennai - 6.

2.The Assistant Commissioner(ST),
Anna Salai assessment Circle,
Chennai - 6. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records, on the files of the 2nd respondent in TIN:33970721820/2010-11 dated 23.11.18 and quash the same as being invalid and illegal and without jurisdiction and pass such other order or orders as the Honourable Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.V.Haribabu
Additional Government Pleader
(Taxes)

O R D E R

Mr.V.Srikanth, learned counsel on record for writ petitioner and Mr.V.Haribabu, learned 'Additional Government Pleader' ['AGP' for brevity] on behalf of both the official respondents are before this Court.

2. With consent of learned counsel on both sides, the main writ petition is taken up and is being disposed of.

3.Impugned order in the instant writ petition, is a Revised Assessment order made by the 2nd respondent under Section 27 of the 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' ['TNVAT Act' for the sake of brevity].

4. Impugned Revised Assessment order is being assailed solely on the ground of the same not being in adherence with what has now come to stay as JKM Graphics Principle owing to M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6 reported in (2017) 99 VST 343(Mad).

5. In the instant case, while the writ petitioner contends that the Revisional notice preceding the impugned order has not been served on the writ petitioner, learned AGP on instructions, submits that the same has been sent by Registered Post with acknowledgment due and it has been received by the noticee and addressee.

6. On a perusal of a copy of the postal acknowledgment card, learned counsel for writ petitioner submits that the signature therein does not appear to be the signature of writ petitioner though the seal of proprietary concerned has been affixed. This becomes disputation on fact and this Court will not be able to decide the same in a writ petition.

7. However, it is submitted without any disputation or disagreement between the parties that the instant matter is covered by an earlier order made by this Court being order dated 18.06.2016 in W.P.No.14246 of 2019, facts being identical. In other words, it is the undisputed position of the parties that the facts in the instant case and the facts in aforesaid W.P.No.14246 of 2019(wherein also, writ petitioner is same i.e., M/s.Daksh Agencies) and the case on hand mirror each other.

8. Therefore, the question of service of Revisional notice preceding the impugned order is left open as it is not necessary to go into it. Owing to the undisputed position that facts in instant case and the aforesaid earlier order are identical or in other words, the facts mirror each other, instant case can be disposed of without going into the factual disputation qua service of revisional notice.

9. For the sake of convenience, clarity and ease of reference, Paragraphs 3 to 12 of the aforementioned earlier order are extracted and reproduced infra:

'3. Subject matter of this writ petition pertains to 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

4.A revised Assessment Order dated 05.04.2019 bearing reference TIN: 33970721820/2013-14 made by the second respondent (hereinafter 'impugned order' for brevity) has been called in question. This Court is informed that impugned order has been made under Section 27(2) of TNVAT Act.

5.Writ petitioner has been carrying on business inter alia as dealer in ready-made garments. It is the case of the writ petitioner that monthly returns were being filed under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act.

6. Under such circumstances, the place of business of the writ petitioner was audited by the Enforcement Wing and certain defects were pointed out. Defects pointed out fall under two categories. Though both pertain to reversal of 'Input Tax Credit' ('ITC' for brevity), first reversal of ITC is based on difference in purchase turnover i.e., between balance sheet and monthly returns and second reversal of ITC is based on mismatch i.e., comparison of Annexure -I (purchase details of assessee) and Annexure – II (sales details of assessee's sellers).

7. In this regard, there is no dispute or disagreement before this Court that two 'show-cause notices' ('SCNs' for brevity) were issued to the writ petitioner and they are dated 30.11.2016 and 01.10.2018.

8. While it is the case of the writ petitioner that first of the SCNs dated 30.11.2016 was not served on the writ petitioner, it is fairly submitted by writ petitioner's counsel that second SCN dated 01.10.2018 was served on the writ petitioner, but it was served as part of a batch pertaining to certain writ petitions which are pending and hence, the writ petitioner could not respond to the second SCN. This explanation is hardly acceptable. However, without expressing any opinion on the assessee not responding to the SCN, this Court proposes to remit this matter back to the second respondent for a different reason. That different reason is that impugned order has been made without adhering to what has now come to stay as JKM Graphics principle [M/s.JKM Graphics Solutions Private Limited Vs.The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6 reported in (2017) 99 VST 343]. Most relevant

paragraphs in JKM Graphics Solutions Private Limited case are Paragraphs 50 and 56 and the same read as follows:

'50. As pointed out earlier, 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, it 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 putforth his defence and demonstrate as to how this prima facie view is without any basis.'

'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.'

9. Learned counsel for revenue submitted that the writ petitioner has not responded to the second SCN and in the absence of any response from the writ petitioner, plea of adherence to JKM Graphics principle becomes a very weak submission.

10. Be that as it may, this Court, as alluded to supra, has left open the question of the writ petitioner not responding to the second SCN and has made it clear that this Court is remitting the matter back to the second respondent on the sole ground of not adhering to JKM Graphics principle.

11. Though some other grounds including a ground to the effect that SCN has been issued by the first respondent and the impugned order has been made by the second respondent have been raised in the instant writ petition, learned counsel for writ petitioner very fairly submitted that there is no disputation regarding second respondent having jurisdiction to revise the assessment under Section 27(2) of TNVAT Act.

12. In the light of narrative thus far, the following order is passed:

a) The impugned order dated 05.04.2019 bearing reference TIN: 33970721820/2013-14 is set aside. To be noted, impugned order is set aside solely on the ground of non-adherence to JKM Graphics principle;

b) Writ petitioner undertakes to submit all supporting documents within a fortnight from the date of receipt of a copy of this order to second respondent.

c) Second respondent shall redo the assessment in accordance with law, more particularly by applying JKM

Graphics principle as expeditiously as possible.

This writ petition is disposed of on above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.'

10. Therefore, it follows as an inevitable sequitur that a similar order as in the operative portion of the earlier order i.e., Paragraph No.12 is to be passed in the instant writ petition also. Therefore, the following order is passed:

a) The impugned order dated 23.11.2018 bearing reference TIN:33970721820/2010-2011 is set aside. To be noted, impugned order is set aside solely on the ground of non-adherence to JKM Graphics principle. In other words, no view or opinion is expressed on merits of the impugned order.

b) Writ petitioner undertakes to submit to second respondent all supporting documents within a fortnight from the date of receipt of a copy of this order.

c) Second respondent shall redo the assessment in accordance with law, more particularly by applying JKM Graphics principles as expeditiously as possible.

11. This writ petition is disposed of on above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

kak

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Anna Salai assessment Circle,
Chennai - 6.

2.The Assistant Commissioner(ST),
Anna Salai assessment Circle,
Chennai - 6.

+1cc to Mr.V.Srikanth, Advocate, SR.No.55622
+1cc to the Special Govt.Pleader (Taxes), vide SR.No.56625

W.P.No.7938 of 2019
and
W.M.P.No.8539 of 2019

Kak(11/10/2019)