IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 23.07.2019

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.9456 of 2019
&
W.M.P.No.10041 of 2019

Tvl.Bharath Packing
Represented by its Proprietrix
No.56/2, Audiappa Naicken Street
Chennai – 79 ... Petitioner

Vs.

The State Tax Officer
Peddunaickenpet Assessment Circle
48/39, Rajaji Salai
Wavoo Mansion, Chennai - 01 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the respondent in order dated 29.01.2019 in TIN 339000281721/2014-15 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Ms.G.Dhanamadhri

ORDER

Mr.Adithya Reddy, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of lone official respondent are before this Court.

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

3. Subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for brevity.

4.Writ petitioner is a dealer registered under TNVAT Act. Writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment. There was an inspection in the business premises of the writ petitioner on 10.04.2015 and during inspection certain discrepancies were noticed. Thereafter, a revisional notice dated 14.01.2016 was issued pointing out discrepancies and writ petitioner sent a reply dated 13.02.2016. Ultimately a revised Assessment Order came to be passed under Section 27 of TNVAT Act dated 29.01.2019 bearing reference TIN 33900281721/2014-15 (hereinafter 'impugned order' for the sake of clarity, brevity and convenience).

5.There are three issues in the revised Assessment Order and they are:

1) ITC reversal on purchase from Registration cancelled dealer;

2) Consignor movement not accounted; and

3) Difference between Annexure I and Annexure II of the seller.

6. However, what is of importance is mismatch. In the instant case, after hearing both the learned counsel, there is no disputation that this matter is covered by an order made by this Court in M/s.JKM Graphics Solutions case [M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer reported in 2017 (99) VST 343]. Relevant paragraph 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.'

7. It is brought to the notice of this Court that a circular being Circular No.3 of 2019 bearing reference Q1/39643/2018 dated 18.01.2019 has been issued by the Office of the Commissioner of State Tax, Chepauk, Chennai - 600 005 to all concerned, including State Tax Officers.

8. To be noted, the aforesaid circular came to be issued owing to the order passed in JKM Graphics Solutions' case.

9. The most relevant paragraph of the circular is contained in Paragraph (c) and the same reads as follows:

'c) Where a proposal received from the Enforcement Wing/ISIC involves mismatch of ITC and other issues, the issues other than mismatch of ITC can be finalized by the assessing authority leaving the mismatch issue pending until a mechanism in this regard is evolved. However, notices shall be issued for all the cases involving mismatch of ITC to keep the issue alive until it is resolved and a list of such cases shall be maintained in the respective assessment circle, Territorial JC and DC offices. A monthly abstract of such cases along with revenue involved shall be prepared and made available to higher authorities for verification as and when called for.'

10. In the light of the aforesaid undisputed position, the following order is passed:

a) Impugned order being revised Assessment Order dated 29.01.2019 bearing reference TIN 339000281721/2014-15 is set aside and remitted back to the respondent. To be noted, impugned order is set aside owing to the aforesaid circular without expressing any opinion on the merits of the matter;

b) As it is submitted that submission of a new module and machanisam is in the anvil, respondent shall await outcome of the same.

c) No sooner than there is an outcome qua JKM principle, the respondent shall issue fresh notice to the writ petitioner and redo the revised assessment as expeditiously as possible in accordance with law and in a manner known to law.

This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//
Sub Assistant Registrar

gpa

To

The State Tax Officer
Peddunaickenpet Assessment Circle
48/39, Rajaji Salai
Wavoo Mansion, Chennai - 01

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.63695
+1cc to the Government Pleader(Taxes), S.R.No.63464

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VBA(CO)

RRS(29/08/2019)