IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2019

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THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.13692, 13695, 13698 & 13703 of 2019
and
W.M.P.Nos.13753, 13755, 13757 & 13763 of 2019

M/s. Sri Abirami Agencies,
Represented by its Proprietor,
No.127, East Pondy Road,
Valavanur, Villupuram Taluk. ... Petitioner in all WPs

Vs.

1. The Assistant Commissioner (CT) (FAC)
Villupuram – II Assessment Circle,
Villupuram.

2. The Appellate Deputy Commissioner (CT)
Cuddalore. ... Respondents in all WPs

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN No. : 33444701488/2007-2008, TIN No. : 33444701488/2008-2009, TIN No. : 33444701488/2009-2010, TIN No. : 33444701488/2010-2011 respectively and quash the impugned order dated 04.03.2019 as passed without issuing a notice as contemplated under the provisions of the TNVAT Act and also without granting an opportunity to the petitioner and further direct the first respondent to pass fresh assessment after granting opportunity to the petitioner as directed by the second respondent in A.P.No.318/2014, A.P.No.319/2014, A.P.No.320/2014, A.P.No.321/2014 respectively, dated 29.10.2018.

For Petitioner : Mr.P.Rajkumar
(in all WPs)

For Respondents : Mr.Mohammed Sheffiq
(in all WPs) Special Government Pleader (Taxes)

C O M M O N O R D E R

All these writ petitions are filed challenging the orders of assessment made under Section 27(1)(a) of the Tamil Nadu

Value Added Tax Act, 2006 relevant to Assessment Years 2007-2008 to 2010-2011 dated 04.03.2019.

2. The case of the petitioner in short is as follows :-

In respect of the above Assessment Years, the Assessing Officer originally passed orders of assessment dated 24.10.2014. The petitioner challenged the said Assessment Orders before the first Appellate Authority namely the Deputy Commissioner (CT), Cuddalore. The Appellate Authority by order dated 29.10.2018, allowed the appeals in part and remanded the matter to the Assessing Officer in respect of the mismatch issue. The Appellate Authority has also set aside the penalty levied and remitted the matter for fresh consideration. However, the Assessing Officer after remand, issued the impugned proceedings without giving notice to the petitioner and hearing them. Hence, these writ petitions are filed challenging the impugned orders of assessment.

3. Mr.P.Rajkumar, learned counsel appearing for the petitioner submitted that once the Appellate Authority has remitted the matter back to the Assessing Officer for reconsidering the particular issue, also by setting aside the penalty and remitting the matter for fresh consideration of such issue as well, the Assessing Officer ought to have given notice to the petitioner and thereafter, passed the fresh assessment order. He further contended that in this case, the Assessing Officer has not given such opportunity to the petitioner. He also contended that in any event, as to issue involved in this case viz., mismatch issue, has to be dealt with and decided as per the directions and guidelines issued in JKM Graphics case reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343), the Assessing Officer has to redo the assessment after following such procedures as well.

4. Per contra, the learned Special Government Pleader submitted that the Assessing Officer has passed the impugned assessment order as per the remand order passed by the Appellate Authority. However, the learned Special Government Pleader (Taxes) is not disputing the fact that before passing the impugned order, the petitioner was not put on notice. He also admitted the position that the issue involved in this case is the mismatch issue which has to be dealt with and decide as per the guidelines/directions issued in JKM Graphics case, for which a centralised mechanism has to be set up.

5. Heard both sides and perused the materials placed before this Court.

6. It is seen that the Assessing Officer has passed the

orders of assessment originally on 24.10.2014. It is further seen that the assessee filed an appeal and Appellate Authority remitted the matter back to the Assessing Officer. It is also seen that the Appellate Authority has set aside the penalty also while remitting the matter back to the Assessing Officer. Both sides admitted the fact that the issue involved in this case is a mismatch issue. Therefore, it is needless to say that such issue has to be dealt with by the Assessing Officer only by following the procedures/guidelines issued in JKM Graphics case.

7. Considering the fact that the Assessing Officer has proceeded to pass the impugned assessment orders without issuing notice to the petitioner, more particularly, when he has chosen to impose penalty also, this Court is of the view that the matter needs to go back to the Assessing Officer for redoing the assessment afresh, after giving an opportunity of hearing to the petitioner and also by following the procedures/guidelines in JKM Graphics case. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remanded to the Assessing Officer for redoing the assessment by following the procedures/guidelines issued in JKM Graphics case, also by granting an opportunity of personal hearing to the petitioner. Such exercise shall be done by the Assessing Officer, as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT) (FAC)
   Villupuram – II Assessment Circle,
   Villupuram.

2. The Appellate Deputy Commissioner (CT)
   Cuddalore.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No. 89821
+1cc to the Special Government Pleader(Taxes), S.R.No. 90202

W.P.Nos.13692, 13695, 13698 & 13703 of 2019

RSV(CO)
GN(26/11/2019)