IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.16242 of 2019
and W.M.P.No.15944 of 2019

Tvl. New Bharath Hardwares
Represented by its Proprietor
No.74, Gingee Road
Tindivanam.

.. Petitioner

vs.

The Deputy Commercial Tax Officer
Tindivanam.

.. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent in TIN No.33334721773/2015-16 dated 07.06.2018 and quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.M.Hariharan
Additional Government Pleader

ORDER

Mr.Adithya Reddy, learned counsel on record for writ petitioner is before this Court. Mr.Hariharan, learned 'Additional Government Pleader' ('AGP' for brevity) accepts notice on behalf of sole respondent.

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

3. Short facts necessary for appreciating this order are as follows:

a) subject matter of this writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

b) an order being a revised assessment made by sole respondent inter alia under Section 27 (1)(a) of TNVAT Act being order dated 07.06.2018, bearing reference No.33334721773/2015-16 (hereinafter 'impugned order' for brevity) has been called in question in the instant writ petition.

c) writ petitioner is a dealer in Hardware and writ petitioner is registered under TNVAT Act with registration number TIN 33334721773.

d) it is a case of writ petitioner that he was filing monthly returns and there was deemed assessment under Section 22(2) of TNVAT Act.

e) A 'show cause notice' ('SCN' for brevity) dated 16.08.2016 was issued with regard to assessment year 2015-16, alleging that certain purchases effected by the petitioner have not been reported. Post SCN, respondent passed an order dated 13.06.2017, adopting best judgment method under Section 22(4) of TNVAT Act. This order dated 13.06.2017 was assailed by writ petitioner by way of a writ petition in this Court, vide W.P.No.20738 of 2017, which came to be disposed of by a Hon'ble Single Judge of this Court on 24.08.2017. Relevant and operative portions of the order dated 24.08.2017 in the earlier round of litigation i.e., W.P.No.24.08.2017, reads as follows:

> '4. Considering the nature of objections raised by the petitioner, this Court grants an opportunity to the petitioner to file a petition under Section 84 of TNVAT Act, within a period of one weeks from the date of receipt of a copy of this order and on receipt of the petitioner, the respondent shall consider the same and pass an order on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner, within a period of two weeks from the date of receipt of the petitioner. Till such an order is passed, no coercive action shall be initiated against the petitioner.

5. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.'

f) Pursuant to aforesaid order, petitioner filed a rectification petition under Section 84 of TNVAT Act. This rectification petition is dated 19.10.2017. Post order of this Court in the earlier round of litigation and aforesaid rectification petition under Section 84 of TNVAT Act, respondent passed the impugned order.

g) Alleging that impugned order is not in tune with JKM graphics principle and is not in conformity with the order passed by this Court by a Hon'ble Judge in the earlier round of litigation, instant writ petition has been filed.

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.

10. In the light of all that have been alluded to supra, the following order is passed:

a) Impugned order dated 07.06.2018 bearing reference No.33334721773/2015-16 is set aside;

b) After submissions of new methodology/module for assessment before learned single Judge, which this Court is informed is in the anvil, 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 case;

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

d) Assessment made afresh shall be communicated to the writ petitioner under due acknowledgement in a manner known to law within seven working day from the date of assessment afresh;

e) Notwithstanding the aforesaid directions, it is made clear that if writ petitioner chooses to file a contempt petition, alleging violation of earlier order of this Court dated 24.08.2017 in W.P.No.20738 of 2017, this order will not impede such a course being adopted by the writ petitioner.

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

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

The Deputy Commercial Tax Officer,
Tindivanam.

+1cc to Mr.Adithya Reddy, Advocate Sr.50457
+1cc to the Special Government Pleader Sr.51324

W.P.No.16242 of 2019
and W.M.P.No.15944 of 2019

sj[co]
srg 24/07/2019