IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 18.06.2019
Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.16910 of 2019
and
W.M.P.No.16498 of 2019

Tvl.SRS Ispatt (P) Ltd
Represented by its Managing Director
Mr.Sanjay Poddar.
.. Petitioner

vs.

The Assistant Commissioner (CT)
Salem Town
North Assessment Circle
Salem.
.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, call for the records on the file of respondent herein in TIN:33862662705/2014-15 dated 24.04.2019 received on 09.05.2010 and quash the same or pass such further or other orders as may be deemed fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondent : Ms.G.Dhanamadhri
G overnment Advocate

O R D E R

Mr.A.N.R.Jayaprathap, learned counsel on record for sole writ petitioner is before this Court. Ms.Dhanamadhri, learned Government Advocate, accepts notice on behalf of sole respondent.

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

3. Owing to the trajectory, which the hearing has taken today, this writ petition now turns on a very narrow

compass. Therefore, short facts shorn of elaboration and details/particulars will suffice for appreciating this order and the same are as follows:

a) Writ petitioner is a registered dealer on the file of respondent herein under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity) and 'Central Sales Tax Act, 1956' ('CST Act' for brevity).

b) Writ petitioner is engaged in the business of buying and selling TMT Bars, Billets, Angles, Channels, M.S.Ingots, M.S.Rod, M.S.Wires, Cement etc.,

c) Writ petitioner submits that it is filing monthly returns under Section 21 of TNVAT Act and therefore, there is deemed assessment under Section 22(2) of TNVAT Act.

d) Financial year, which forms subject matter of the instant writ petition is 2014-15 and the same shall be referred to as 'said assessment year'.

e) When things stood as above, respondent issued a notice dated 02.04.2018 stating that petitioner's place of business was taken up by field audit/enforcement wing officials on 10.03.2015 and certain discrepancies were noticed.

f) Thereafter, petitioner sent a reply dated 10.04.2018 with as many as seven enclosures. To be noted, seven enclosures are annexure II (sale particulars) of writ petitioner's sellers. Thereafter, further notice dated 07.05.2018 was issued by respondent and writ petitioner sent a reply dated 15.05.2018, once again, enclosing annexure II of writ petitioner's sellers.

g) Thereafter, respondent passed a revised assessment order (under Section 27(1)(a) of TNVAT Act) being assessment order dated 24.04.2019 bearing Reference No.TIN:33862662705 (hereinafter 'impugned order' for brevity)

h) assailing the impugned order instant writ petition has been filed.

4. Learned counsel for writ petitioner submitted that there is only one ground on which impugned order is assailed. To be noted, several grounds have been raised in the affidavit filed in support of instant writ petition, but in the hearing, writ petitioner restricted his submission to one ground of attack qua impugned order. That one ground of attack turns on aforesaid first of the two replies from writ petitioner i.e., reply dated 10.04.2018, where there are seven enclosures. As already mentioned supra, seven enclosures to the reply are all annexure II of writ petitioner's sellers. The enclosures read as follows:

> 'Encl:
> 1.Annexure II of DSRM wires.
> 2.Annexure II of Dindigual Steel Rolling Mills for May & June 2014
> 3. Purchase bill No.1420013479 dated 07.06.2014 of JSW Steel Ltd.
> 4.Annexure I of SRS Ispatt (P) Ltd for the month of Jan'15
> 5.Annexure II of Patson Steel
> 6. Purchase bill No.1420013564 dated:07.06.14 of JSW steel Ltd.
> 7.Purchase bill No.641 & 650 dated 30.04.14 of Noble Tech Industries(P) Ltd.'

5. Adverting to impugned order, learned counsel for writ petitioner submitted that though seven sets of annexure II from seven different sellers of writ petitioners have been enclosed, annexure II set from only one of the sellers has been considered in the impugned order. In other words, it is learned counsel's say that annexure II particulars from six other sellers have not been considered.

6. To be noted, aforesaid submission is on the mismatch aspect of the revised assessment order.

7. Learned Revenue Counsel, who has accepted notice, submitted that with regard to mismatch matters, annexure I being purchase invoice of the assessee and annexure II being sale details of the sellers of the assessee have to be compared and that exercise has to be done. There is no difficultly in accepting the submission that the aforesaid exercise has been done, but the problem presents itself differently. The problem is, such comparison has been made only with regard to one set of annexure II i.e., sale details from one of the sellers of writ petitioner has been done, whereas it has not been done so with regard to sale details i.e., annexure II of six other sellers which

were enclosed to aforesaid reply dated 10.04.2018. The impugned revised assessment order does not articulate or set out that such an exercise has been carried out and there is no other material before this Court to demonstrate that it has been done with regard to six other sellers of writ petitioner.

8. In the aforesaid backdrop, learned counsel for writ petitioner pressed into service a oft-quoted judgment being JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, reported in [2017] 99 VST 343 (Mad). To be noted, JKM Graphics was rendered by a Hon'ble Single Judge of this Court and a perusal of the cases referred therein reveals that an earlier judgment rendered by a Hon'ble Division Bench of this Court in Assistant Commissioner Vs. Infiniti Wholesale Ltd. reported in [2017] 99 VST 341 (Mad) has also been referred to while rendering JKM Graphics.

9. Most relevant paragraph in JKM Graphics is paragraph 50 and the same reads 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.'

10. In the light of JKM principle, this Court passes the following order:

a) impugned assessment order is set aside on the touchstone of JKM principle. To be noted, it is set aside solely on the ground that while seven enclosures being sale details from assessee's sellers have been furnished only one has been considered. Also to be noted, this pertains to mismatch aspect of the impugned revised assessment order. However, for the sake of making the order workable, the entire order is set aside.

b) respondent shall take into account the six enclosures viz., enclosures two to seven sent under cover of reply dated 10.04.2018 from the assessee to respondent, consider the same on the mismatch aspect in a manner known to law and pass revised assessment order afresh after following required procedure in law.

c) Aforesaid exercise shall be completed by respondent as expeditiously as possible.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To

The Assistant Commissioner (CT)
Salem Town
North Assessment Circle
Salem.

+1cc to Mr.A.N.R.Jayaprathap , Advocate SR.No. 49695
+1 cc to Spl Government Pleader Sr.No. 50806

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A.SK(05/08/2019)