IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.17264 of 2019
&
W.M.P.Nos.16805 and 16807 of 2019

M/s.Sakthi Balaji Stores
Represented by its Proprietor
Mr.S.Arumugam
Now residing at No.1/84
Mariamman Koil Street
Chinna Kallipattu
Villupuram District .. Petitioner

Vs.

1. The Deputy Commercial Tax Officer
   Panruti (Rural) Assessment Circle
   Panruti

2. The Commercial Tax Officer
   Panruti (Rural) Assessment Circle
   Panruti .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN 33574501160/2014-15 and quash the order dated 30.01.2017 as passed contrary to the law laid down by the Hon'ble Madras High Court in the case of M/s.JKM Graphics Solutions Private Ltd., reported in 99 VST 343 and in violation of the principles of natural justice and further direct the first respondent to grant an opportunity to the petitioner to file their objections and thereafter pass an order in accordance with law.

For Petitioner : Mr.P.Rajkumar
For Respondents : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Mr.P.Rajkumar, learned counsel on record for the sole writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of both the official respondents are before this Court.

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

3. Instant writ petition arises under 'The 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 was a dealer and had registered himself with the appropriate Authorities under TNVAT Act.

5.it is the case of the Department that the writ petitioner had not filed monthly returns for the Assessment Year 2014-15 as required under TNVAT Act, more particularly under Section 21 of TNVAT Act. Department embarked upon the exercise of verifying the website and came to the conclusion that certain taxable purchases had been made by the writ petitioner during the year 2014-2015 and that the same had not been accounted for.

6. On that basis, the respondent sent proposed assessment to the writ petitioner calling upon the writ petitioner to send his objections, but the same did not evoke any response or reply. Therefore, based on the details gathered from the website of sellers of the writ petitioner, from whom the petitioner had made purchases, a revised assessment was made determining the total and taxable turn over at Rs.20,82,600/-, tax of Rs.3,01,977/- (at 14.5%) besides penalty of Rs.4,52,965/- under Section 22(5) of TNVAT Act. This is vide revised Assessment Order dated 30.01.2017 (hereinafter 'impugned order' for brevity).

7. Impugned order is assailed by the writ petitioner primarily on two grounds. One ground is that JKM Graphics Solutions Private Limited principle [M/s.JKM Graphics Solutions Private Limited Vs.The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6 reported in (2017) 99 VST 343] being the principle laid down by this Court, has not been followed, as the first respondent has passed the impugned order by taking into account the details from the website of the sellers from whom writ petitioner is said to have made purchases. The second ground is that impugned Assessment Order has not been served on the writ petitioner, more particularly it has not been served in accordance with Rule 19(1)(d) of the 'Tamil Nadu Value Added Tax Rules, 2007'' ('TNVAT Rules' for brevity).

8. This Court had the benefit of perusing the files.

9.It comes to light from the files that the proposed assessment, calling upon the writ petitioner to send his objections, has been sent by Registered Post with acknowledgement due and as according to the files, the same has been delivered to the noticee i.e., to the writ petitioner.

10. With regard to Rule 19(1)(d) of TNVAT Rules, there is an endorsement from the Inspector of Department who has served by affixing. However, with regard to two independent witnesses, as provided in Rule 19(1)(d) of aforesaid Rules, the question is left open owing to the order which this Court proposes to pass in this case in the light of JKM Graphics Solutions Private Limited principle.

11. In the light of the specific case of the writ petitioner that the impugned order has not been served on the writ petitioner and as perusal of the impugned order brings to light that JKM Graphics Solutions principle has not been applied, this Court is of the view that it would be appropriate to give one more opportunity to the writ petitioner subject to the condition that the writ petitioner pays 15% of the tax assessed i.e., excluding the penalty vide impugned order.

12. This order is being passed owing to the peculiar facts and circumstances of this case and more so in the light of the stated position of the writ petitioner that he has closed down his business.

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

a) The petitioner is directed to treat the impugned order dated 30.01.2017 as show-cause notice and file his objections, within a period of two weeks from the date of receipt of a copy of this order;

b) By consent of both sides, personal hearing is now fixed on 01.08.2019 (Thursday) at 12 Noon in the office of the respondent.

c) Writ petitioner shall pay 15% of the tax assessed i.e., 15% of Rs.3,01,977/- (Rupees Three Lakhs One Thousand Nine Hundred and Seventy Seven only) on or before the personal hearing. If the writ petitioner does not pay 15% of the tax assessed vide the impugned order within the aforesaid time frame, there will be no personal hearing and the impugned order will stand revived.

d) If the writ petitioner pays 15% of the tax assessed and avails of the personal hearing, the respondent shall take into account all the objections and documents which the writ petitioner shall produce and redo the assessment in accordance with JKM

Graphics Solutions Private Ltd., principle as expeditiously as possible.

e) Once assessment is being redone in the aforesaid manner, the same shall be communicated to the writ petitioner under due acknowledgement in accordance with Rules under the TNVAT Rules.

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

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Deputy Commercial Tax Officer
   Panruti (Rural) Assessment Circle
   Panruti

2. The Commercial Tax Officer
   Panruti (Rural) Assessment Circle
   Panruti

+1 cc to Mr.P.Rajkumar, Advocate, S.R.No.52054

+1 cc to the Special Government Pleader(taxes), S.R.No.52993

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VBA(CO)
SSM(25/07/2019)