IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18589 of 2019
&
W.M.P.No.17909 of 2019

M/s.BRIGHT POINT INDIA (P) Ltd.,
MF-7, Cipet Hostel Road
Thiru-Vi-Ka Industrial Estate
Guindy
Chennai - 600 032 ... Petitioner

Vs.

The Assistant Commissioner (ST)
Pammal Assessment Circle
Chennai - 600 044 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the Respondent in his proceedings in TIN No.33521344565/2014-15 dated 15.05.2019, to quash the same and to direct the respondent to pass revised order pertaining to the issue of "Rejection of Sales Return" after providing invoice wise details of intranet report generated from department websites in the circumstances of the case.

For Petitioner : Mr.R.Sridhar

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Mr.R.Sridhar, learned counsel on record for sole writ petitioner is before this Court. Mr.V.Haribabu, learned Additional Government Pleader accepts notice on behalf of the lone official respondent.

2.With the consent of learned counsel on both sides, main writ petition itself 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 the sake of brevity.

4.Revised Assessment Order dated 15.05.2019 bearing reference No.33521344565/2014-15 passed by the sole respondent with regard to the writ petitioner for the Assessment year 2014-2015 has been called in question and the same shall hereinafter be referred to as 'impugned order' for the sake of brevity, convenience and clarity.

5.Learned counsel for writ petitioner submits that writ petitioner is a dealer under TNVAT Act and monthly returns were filed inter alia under Section 21 of TNVAT Act and there was deemed Assessment under section 22(2) of TNVAT Act. Under such circumstances, business premises of the writ petitioner was inspected by the Enforcement Wing on 24.08.2015 pursuant to which proposals were made and the writ petitioner was called upon to give objections and thereafter, impugned order came to be passed.

6. The primary and pivotal submission of writ petitioner is that the impugned order is in violation of what has now come to stay as JKM Graphics principle owing to M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer reported in 2017 (99) VST 343. It is the pointed submission of learned counsel for writ petitioner that invoice wise break up ought to have been given.

7. Revenue counsel adverting to the impugned order submits that with regard to the proposal, there are eight heads and vide the impugned order only head Nos.1 and 6 have been confirmed. It is pointed out that all the other heads, namely heads 2 to 5 as well as 7 and 8 have been dropped. Saying so, learned counsel submits that it cannot be gainsaid by the writ petitioner that the respondent has not independently made an assessment based on the objections. Learned counsel for writ petitioner also submits that even with regard to the two heads, namely head Nos.1 and 6 which have been confirmed, this writ petition is confined to head No.6 alone, which is captioned 'Sales return not accounted for by customers'. For the sake of convenience 8 heads in the impugned order are reproduced and the same reads as follows:

1. Reversal of ITC on interstate sales without C forms.
2. Difference in reporting import purchase
3. Difference in reporting interstate purchase
4. Purchase run
5. Sales return
6. Sales return not accounted for by customers
7. Exempted sales
8. Zero rated sales

8. As mentioned supra, only heads 1 and 6, namely 'Reversal of ITC on interstate sales without C forms' and 'Sales return not accounted for by customers' have been confirmed and the other heads have been dropped. Even with regard to heads 1 and 6, according to learned counsel for writ petitioner, as mentioned supra, this writ petition is confined to Head No.6, which is 'Sales return not accounted for by customers'.

9. It is submitted that some of the goods sold by the writ petitioner were returned by the customers, but there is no supporting document to buttress the same. Relevant portion of the impugned order with regard to Head No.6 reads as follows:

> 6. Sales return not accounted for by customers: The dealers have classified this item into two headings, viz., unfructified sales and purchase returns not reported by buyers. Regarding the unfructified sales, they have furnished the list of cases falling under this head along with copy of sale invoice issued by them. Other than this, they have not filed any other document to prove that the goods have been actually returned to them. Regarding the purchase returns not declared by buyers, they have stated that they are taking steps to provide proper reply. But so far, they have not filed any reply in this regard. In the absence of conclusive documentary evidence to prove return of goods within the mandatory period prescribed, the claim made by them is not acceptable. Hence the proposals made out in this regard are confirmed.

10. This takes us to the JKM Graphics principle. Relevant paragraph in JKM Graphics Solutions Private Limited case is Paragraph No.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.'

11. A perusal of aforesaid portion of the impugned order, which has been extracted and reproduced supra, leaves this Court with the considered view that it cannot be gainsaid that JKM Graphics principle has not been adhered to. This is more so, as the writ petitioner who had sought time to give documents with regard to the return of goods, has not done so. In JKM Graphics principle, there have been objections, but the Assessing Authority proceeded solely based on annexure II of the selling dealers. Therefore this Court accepts the contention of learned Revenue counsel that JKM Graphics principle is distinguishable on facts and therefore, it does not come to the aid or advance the case of the writ petitioner.

12. There is no disputation before this Court that alternate remedy of statutory appeal is available to the writ petitioner against the impugned order and that a statutory appeal shall lie before the jurisdictional Appellate Deputy Commissioner. There is no disputation that such a statutory appeal is under Section 51 of TNVAT Act.

13. In the light of the narrative thus far, this Court is of the considered opinion that this is a fit case to relegate the writ petitioner to the alternate remedy of statutory appeal to the jurisdictional Appellate Deputy Commissioner. In this regard, this Court deems it appropriate to observe that from a long line of authorities it can be safely inferred that alternate remedy is not an absolute rule. In other words, alternate remedy is not a rule of compulsion, but it is a rule of discretion. Though alternate remedy is a rule of discretion, Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] has held that when it comes to cases pertaining to taxes, cess etc., i.e., fiscal laws in general, rule of alternate remedy has to be applied with utmost rigour. To be noted, Satyawati Tandon Case has recently been reiterated by Hon'ble Supreme Court in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Relevant paragraph in K.C.Mathew case is paragraph 10 and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)
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> > "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of

banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(Underlining made by Court to supply emphasis and highlight)

14. In the light of the narrative thus far, this Court is left with the considered view, as mentioned supra, that this is a fit case to relegate the writ petitioner to the alternate remedy of appeal before jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act. If the writ petitioner chooses to avail such alternate remedy of statutory appeal, Appellate Authority shall look into the invoice wise break up issue as the Appellate Authority is an Authority dealing with facts.

15. With regard to availing of the appeal remedy, if there is any delay, it is open to the writ petitioner to seek condonation of delay as well as exclusion of time spent in the instant writ petition under Section 14 of Limitation Act and if such prayers are made, the same shall be dealt with and disposed of by the Appellate Authority on their own merits and in accordance with law.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST),
Pammal Assessment Circle,
Chennai – 600 044.

+1cc to Mr.R.Sridhar, Advocate Sr.54704
+1cc to the Special Government Pleader Sr.55106

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