IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.NOS.23133, 23138, 23140,
23487, 23497 & 23501 OF 2019
and WMP Nos.22837, 22840, 22842,
23292, 23293 & 23294 of 2019

Tvl.Jin Plast India Ltd.
Rep. By its Director
Mr.Deepak Chhalani ...Petitioner in all W.Ps.

-Vs-

The Assistant Commissioner (State Tax)
Sowcarpet Assessment Circle
Chennai – 600 001.
...Respondent in all W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent bearing TIN/33090240990/2008-09, TIN/33090240990/2010-11, TIN/33090240990/2011-12, TIN/33090240990/2012-13, TIN/33090240990/2013-14 and TIN/33090240990/2014-15 dated 15.05.2019, quash the same and direct the respondent to redo the assessment after furnishing the D7 records seized on 21.03.2016 and by affording an opportunity to the petitioner and pass further order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.S.Raveekumar
(In all W.Ps)

For Respondent : Mr.V.Haribabu,
(In all W.Ps) Additional Government Pleader

COMMON ORDER

Mr.S.Raveekumar, learned counsel on record for writ petitioner in all the six writ petitions and Mr.V.Haribabu, learned Additional Government Pleader, who accepted notice on behalf of the sole respondent in all the six writ petitions are before this Court.

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

3. This Court is informed without any disputation or disagreement that these six writ petitions arise out of a common factual matrix, that the central theme/core issue in all these six writ petitions is the same and only the assessment years are different, that the six assessment years which form subject matter of instant writ petitions are 2008-09, 2010-11 to 2014-15, obviously the numerical values are different.

4. There is also no disputation or disagreement that subject matter of all these six writ petitions arise under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act for brevity.

5. Though several averments have been made in the affidavits filed in support of all the six writ petitions and though several grounds have been raised and contentions have been canvassed/urged in the affidavits filed in support of all the six writ petitions, at the hearing, learned counsel for writ petitioner confined his submission to one pivotal point and that one pivotal point is, writ petitioner did not receive revisional notices prior to the impugned orders, that impugned orders were served on the writ petitioner only in the second week of June 2019, that only from the impugned orders the writ petitioner came to know that two revisional notices dated 26.07.2017 (first revisional notice) and 22.11.2017 (second revisional notice) were issued prior to the impugned orders.

6. To be noted, this Court is informed that all the six impugned orders have been made under Section 27 (1) (a) (b) of TNVAT Act. Placing reliance on proviso to sub-sections 1 and 2 of Section 27 of TNVAT Act, it was urged that it is statutorily imperative that a reasonable opportunity to show cause against impugned orders is given to writ petitioner before making of the impugned orders.

7. In the instant case, two aspects of the matter came to light.

8. Read this in conjunction with and in continuation of earlier proceedings of this Court dated 19.08.2019, which reads as follows:

> 'Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) accepts notice on behalf of lone respondent and seeks time to get instructions.
>
> 2. Registry to show the name of learned

Special Government Pleader (Taxes) in the next listing.

3. List in the motion list day after tomorrow i.e., on 21.08.2019.'

9. Today, the matter is listed after revenue counsel has obtained instructions. To be noted, Mr.R.A.Bertrand Russell, Commercial Tax Officer, Sowcarpet Assessment Circle is present in Court and is instructing the Revenue counsel Mr.V.Haribabu (Additional Government Pleader).

10. In the aforesaid scenario, two aspects which came to light are as follows:

a) the aforesaid two revisional notices i.e., first revisional notice and second revisional notice have not been served on the writ petitioner, but have been served on one Prakash Plastic Works at 18, Kasi Chetty Street, Chennai - 79. This Court is informed that Prakash Plastic works is being run by a close relative of the Director of writ petitioner dealer.

b) Total tax/penalty liability qua six impugned orders is Rs.48,90, 862/- (Rupees Forty Eight Lakhs Ninety Thousand Eight Hundred and Sixty Two only). However, as against this, a sum of not less than Rs.23,50,000/- (Rupees Twenty Three lakhs and Fifty Thousand only) which is in the region of Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) has been paid by writ petitioner as writ petitioner has been making advance tax payments.

11. From the above, it comes to light that writ petitioner has admittedly paid around 50% of the tax/penalty liability qua impugned orders.

12. There is also no difficulty in accepting the submission that writ petitioner being given a reasonable opportunity to show cause against impugned orders is statutorily imperative in the light of proviso to sub-Sections 1 and 2 of Section 27 of TNVAT Act.

13. In the light of the narrative thus far, this Court is left with the considered view that in the facts and circumstances of this case, it will be appropriate to set aside the impugned orders, remit the matter back to the respondent for redoing the revised assessment afresh after serving the revisional notices to the writ petitioner after getting response/objections from the writ petitioner.

14. Owing to all that have been set out supra, the following order is passed:

a) all six impugned orders being orders all dated 15.05.2019, bearing Reference Nos. TIN/33090240990/2008-09, TIN/33090240990/2010-11, TIN/33090240990/2011-12, TIN/33090240990/2012-13, TIN/33090240990/2013-14 and TIN/33090240990/2014-15 are set aside. It is made clear that impugned orders are set aside solely on the ground that writ petitioner has not been given a reasonable opportunity to show cause against the impugned orders before making the same. In other words, it is made clear that no view or opinion is expressed on the merits of the matter.

b) respondent shall now serve the aforesaid two revisional notices dated 26.07.2017 and 22.11.2017 on the writ petitioner within a fortnight from the date of receipt of a copy of this order, give reasonable time to the writ petitioner dealer to send objections and respond to the same.

c) after the response/objections from the writ petitioner, respondent shall redo the revised assessment and pass revised assessment orders afresh as expeditiously as possible and in any event within a over all time frame of 12 weeks from the date of receipt of a copy of this order.

d) Revised assessment orders which are redone and passed afresh in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgement in accordance with the operating rules in this regard under the TNVAT Act.

All these six writ petitions are disposed of with the aforesaid directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

vsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (State Tax)
Sowcarpet Assessment Circle
Chennai – 600 001.

+1cc to Mr.S.Ravee Kumar, Advocate, SR.No.71589
+1cc to the Spl. Govt.Pleader,(Taxes) Vide Sr.No.72206

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Kak(26/09/2019)