IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.23646, 23649, 23651, 23652, and 23653 of 2019
&
W.M.P.Nos.23473, 23474, 23476, 23477 and 23478 of 2019

Tvl.SCM Garments Pvt. Limited
Represented by its Director
Thiru.T.Loganathan
No.57, VOC Nagar (South)
Valayankadu
Tiruppur – 641 603 .. Petitioner in all W.Ps

vs.

The Assistant Commissioner (ST)
Tiruppur (North) Assessment Circle
CT Main Building, Kumaran Road
Tiruppur – 638 601 .. Respondent in all W.Ps

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records in respect of the impugned order TIN 33502307107/2008-09, TIN 33502307107/2009-10, TIN 33502307107/2010-11, TIN 33502307107/2011-12 and TIN 33502307107/2012-13, all dated 28.03.2019 of the Respondent under the Tamil Nadu Value Added Tax Act, 2006 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Ms.G.Dhanamadhri
Government Advocate

COMMON ORDER

Mr.Adithya Reddy, learned counsel on record for writ petitioner in all these five writ petitions and Ms.G.Dhanamadhri, learned Government Advocate, who has accepted notice on behalf of the respondent in all these five writ petitions are before this Court.

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

3.This Court is informed that subject matter of main 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.It is submitted that all the five writ petitions arise out of a common factual matrix. More importantly,it is submitted that the central theme/core issue in all the five writ petitions is one and the same and only the assessment.years are different. The five assessment years are 2008-09 to 2012-13 (five successive assessment years). Therefore, the numerical values will obviously be different.

5. As it is submitted without any disputation or disagreement that the central theme/core issue in all these five writ petitions is one and the same, a common order is being passed disposing of these five writ petitions. To be noted, as mentioned supra, it was also submitted that all the five writ petitions arise out of a common factual matrix.

6.Five revised Assessment Orders bearing reference TIN 33502307107 /2008-09, TIN 33502307107/2009-10, TIN 33502307107/2010-11, TIN 33502307107/2011-12 and TIN 33502307107/2012-13, all dated 28.03.2019 (hereinafter 'impugned orders' in plural for convenience and 'impugned order' in singular for clarity) have been called in question in all these five writ petitions. This Court is informed that all five impugned orders have been made by the respondent under Section 27(1)(b) of TNVAT Act.

7.Revised assessment turns on 'Input Tax Credit' ('ITC' for brevity) reversal on invisible and visible loss qua export sales. Writ petitioner, being a dealer under TNVAT Act, was filing monthly returns and on scrutiny of the monthly returns for the respective assessment years, what according to the respondent are defects pertaining to the aforesaid ITC reversal on invisible and visible loss were noticed resulting in impugned orders being passed.

8. As already mentioned supra, this Court is informed by both sides without any disputation or disagreement that the impugned orders have been made by the respondent under Section 27(1)(b) of TNVAT Act, though the provisions of law under which impugned orders have been made have not been set out in the

impugned orders.

9. Notwithstanding very many averments made in the affidavits filed in support of the writ petitions and very many grounds/contentions that have been raised in the affidavits filed in support of the writ petitions, learned counsel for writ petitioner at the hearing, focused his submissions on one pivotal aspect and that one pivotal aspect is reasonable opportunity not being given.

10. Before proceeding further in this direction, it is made clear that with regard to orders under Section 27(1)(b) ofTNVAT Act, it will suffice if a reasonable opportunity to show cause against the proposed revision of Assessment is given. In other words, for revised Assessment Orders under Section 27(1)(b) of TNVAT Act, reasonable opportunity of being heard i.e., personal hearing is not statutorily imperative. To be noted, this position applies to revised Assessment Orders under Sections 27 (1)(a) and 27(2) of TNVAT Act also. However, this does not impede or fetter the rights of the respondent to grant an opportunity of being heard to a dealer, if on the given set of facts in a case the Assessing Officer is of the considered opinion that a personal hearing may be necessary.

11. This is one such case where the respondent Assessing Officer has considered it necessary to give a personal hearing though it is not statutorily imperative as the impugned orders have been made under Section 27(1)(b) of TNVAT Act. To be noted, as already alluded to supra, with regard to revised Assessment Orders under Section 27(1)(b) of TNVAT Act, reasonable opportunity to show-cause against proposed revised Assessment Order will suffice. This takes us to the pivotal point that was canvassed by learned counsel for writ petitioner.

12. For appreciating the argument of learned counsel for writ petitioner as well as learned Revenue counsel, it may be relevant to extract the relevant paragraph in the impugned orders pertaining to personal hearing. Relevant paragraphs read as follows:

> 'A notice was issued to the dealer on 10.02.2017 and personal hearing notice was issued to dealer on 15.02.2019, Stated that if any objections in this matter, they are requested to file their reply/objections within 3 days of time of receipt of personal hearing notice. The dealer have filed their letter dated 20.02.2019, requested further more 15 days of time is needed to submit their reply regarding the visible and invisible loss. The dealer have filed one more letter on 14.03.2019 and requested 10 days of

time to file their objections.'

To be noted, the aforesaid paragraph is ad-verbatim the same in all the five impugned orders.

13. The respondent, having chosen to grant personal hearing to the writ petitioner/dealer, has issued a notice to the dealer on 15.02.2019 calling upon the dealer to file objections/reply, if any, within three days. This, in the considered opinion of this Court, is too short a time frame.

14. Learned counsel for writ petitioner adverts to a Departmental Circular being Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 and submits that even according to the departmental circular, 15 days time limit shall be reasonable opportunity.

15. Learned Revenue Counsel submits that Circulars are only directory and not mandatory.

16. Be that as it may, considering the nature of the instant matter, more particularly in the facts and circumstances of instant case, even de hors the Circular, this Court is of the considered view that a fortnight's time or in otherwords, 15 days time would have been reasonable.

17. Learned Revenue counsel pointed out that even prior to 15.02.2019, a notice was issued on 10.02.2017 itself, but a perusal of 10.02.2017 notice reveals that it does not talk about personal hearing. Therefore, personal hearing was first decided to be granted only vide 15.02.2019 notice.

18. Having said this, it is to be noted that writ petitioner dealer nonetheless responded by sending letter dated 19.02.2019 seeking 15 days time to submit their reply regarding visible and invisible loss. 15 days time elapsed on 06.03.2019 and on 13.03.2019 writ petitioner sent another letter requesting for 10 more days time, but this 10 days time elapsed on 24.03.2019 and the impugned orders were passed three days later i.e., 28.03.2019.

19. Learned counsel for writ petitioner submitted that having chosen to give personal hearing, a reasonable opportunity in terms of time has not been given to the writ petitioner dealer.

20. Learned Revenue counsel pointed out that on expiry of further period of 10 days, writ petitioner ought to have written to the Authority asking for further time. However, in this regard also, the aforementioned Departmental Circular was pressed into service by the learned counsel for writ petitioner

to say that in cases where time is requested by a dealer, it shall be examined and a reply has to be given to the dealer communicating to the dealer as to whether the request has been acceded to or not, depending on whether a genuine reason exists. In this regard, learned counsel for writ petitioner also pressed into service an order made by a Hon'ble single Judge of this Court being order dated 07.02.2017 in Kalai Constructions Vs. The Commercial Tax Office. Attention of this Court was drawn to paragraphs 6, 9 and 10 of the said case, which read as follows:

> '6.Mr.Venkatesh, on the other hand, submits on behalf of the department that the impugned orders were passed after the period for which adjournment was sought had expired and therefore, the petitioner could have no grievance qua the impugned orders on this score. In other words, the learned counsel submitted that the petitioner had sought an accommodation for a period of one month, which was given, since, the impugned orders were passed well after the period of one month had passed, they were valid in the eyes of law.'
>
> ' 9.Undoubtedly, the Circular dated 20.04.2001 in certain circumstances requires the respondent/ assessing officer to deal with 5 the application. This aspect is exemplified in Clause 11 of the Circular dated 20.04.2001. For the sake of convenience, the said Clause is extracted hereunder:
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> "11.Where the assessing authority asked the dealer to appear and produce book on a particular day and the dealer files application for adjournment before that date, the assessing authority is bound to consider and pass order on application."
>
> 9.1.A mere perusal of the Clause would show that the respondent/ assessing officer is required to consider and pass an order on an application for adjournment when circumstances necessitate such accommodation. The underlying purpose being that principles of natural justice have to be given there with full play before coming to a conclusion one way or the other. Furthermore, importantly, Clause 11 also points in the direction that it is not as if adjournment has to be given for the asking. The officer concerned may in certain cases for good reason reject the application but after consideration.
>
> 9.2.This principle can be applied to the instant situation as well. By virtue of the revision notices the respondent/ assessing officer had proposed reversal of ITC. The petitioner sought time to respond to the proposals. It is not as if several adjournments had been sought. 6 A month's accommodation sought by

the petitioner cannot be said to be unreasonable. The argument advanced by Mr.Venkatesh that the impugned orders were passed after the period of one month had passed is misconceived because the petitioner need to know where he stood qua his request for accommodation. It is for this reason that it was incumbent on respondent/ assessing officer to consider the request for accommodation.'

' 10.The petitioner is, in my view, right in contending that he had no clue as to whether or not his request for adjournment had been considered. Therefore, quite naturally, as contended before me, by the learned counsel for the petitioner, the petitioner would have been taken by surprise, when the impugned orders were passed. Therefore, notwithstanding the fact that the orders were passed after a period of one month had expired, which is the period of accommodation sought for by the petitioner, the grievance of the petitioner did not get addressed, which is that he had no opportunity to present his case.'

21. In the considered view of this Court, Kalai Constructions case is clearly distinguishable on facts as that is a case where a request for further time was made within 15 days from the date of revisional notice. To be noted, Circular No.7 dated 03.02.2014 also talks about situations where request is made by the dealer within 15 days . Relevant part of Circular No.7 of 2014 is paragraph 3(a) and the same reads as follows:

'3. In the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Commissioners/Deputy Commissioners should verify at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.

(a) Passing of orders:

Fifteen days time-limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:-

(i) After issue of notice calling for the objections, if any, further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not, as the case may be, only if there exists a genuine reason.

(ii) Objections filed by the dealer on the pre-assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised in short, the speaking order which is complete shall be passed.

(iii) As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.

22. Learned Revenue Counsel again reiterated that these circulars are only directory in nature and not mandatory.

23. This Court is of the considered view that, in the light of facts and circumstances of the instant case, it may not be necessary to delve into those aspects as independent of aforementioned circular and the chronicle of dates as can be culled out from the impugned orders (to be noted, relevant paragraph which is adverbatim the same in all the five impugned orders has been extracted and reproduced supra), this is a fit case to grant another opportunity to the writ petitioner as impugned orders have been passed on the 3rd day after the lapse of further time of 10 days that was sought for by writ petitioner. Besides the facts and circumstances of case on hand, this Court has also borne in mind the position that the writ petitioner has sought for a fortnight's time first and a week after expiry of fortnight's time, has sought for 10 more days, which means writ petitioner has sought for 32 days time in all. Further more, writ petitioner counsel now submits that he is ready to submit objections within one week from the date of receipt of a copy of this order and also attend a personal hearing if the same is held thereafter without asking for further time.

24. In the light of the narrative thus far, this Court deems it appropriate to pass the following order:

a) All five impugned orders bearing reference TIN 33502307107/2008-09, TIN 33502307107/2009-10, TIN 33502307107/2010-11, TIN 33502307107/2011-12 and TIN 33502307107/2012-13, all dated 28.03.2019 are set aside. It is made clear that impugned orders are set aside solely on the ground of adequate time not being given for the personal hearing which the respondent in her discretion has chosen to give. In otherwords, it is also made clear that no opinion or view is expressed by this Court on the merits of the matter;

b) Writ petitioner shall submit reply/objections together with all supporting documents within one week from the date of receipt of a copy of this order;

c) On receipt of reply/objections from the writ petitioner dealer together with all supporting documents, respondent shall hold a personal hearing within a fortnight therefrom and the date, time and venue of the personal hearing shall be communicated to the writ petitioner in advance. If the writ petitioner does not file reply/objections with all supporting documents within one week from the date of receipt of a copy of this order or if the writ petitioner does not avail personal hearing, which is to be given within a fortnight therefrom, impugned orders will stand automatically revived without further reference to this Court and obviously impugned orders will be carried to their logical end.

d) If the writ petitioner files objections within one week from the date of receipt of a copy of this order and if personal hearing within a fortnight therefrom is availed of, respondent shall redo the revised assessment for the respective Assessment Years and pass revised Assessment Orders on the merits of the reply/objections and supporting documents thereto and in accordance with law as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order;

e) The redone revised Assessment Orders passed in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgement in accordance with the Rules in this regard under TNVAT Act.

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

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

gpa

To
The Assistant Commissioner (ST)
Tiruppur (North) Assessment Circle
CT Main Building, Kumaran Road
Tiruppur - 638 601.

+1cc to Mr.Adithya Reddy Advocate, S.R.No.69534
+1cc to the Spl. Government Pleader(Taxes), S.R.No.69989

KK(CO)
CB(26/09/2019)

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