IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-07-2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.29961 of 2018
And
W.M.P.No.34963 of 2018

KAS International
Represented by its Proprietor,
Flat No.A-1, 1st Floor,
No.3, Millers Road,
Kilpauk,
Chennai-10. .. Petitioner

..Vs..

The Assistant Commissioner (CT),
Purasawalkam Assessment Circle,
F-50, First Avenue,
Anna Nagar (East),
Chennai-10. .. Respondent

Prayer:
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in order dated 14.12.2017 in TIN:33190482853/ 2011-12 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Ms.G.Dhana Madhri,
Government Advocate (Taxes).

O R D E R

Mr.Adithya Reddy learned counsel on record on behalf of writ petitioner and Ms.G.Dhana Madhri, learned Government Advocate on behalf of lone respondent, are before this Court.

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

3. A counter-affidavit dated 20.12.2018 has been filed by lone respondent.

4. After the counter-affidavit was filed by lone respondent, in the light of averments made in paragraph-5 of the counter-affidavit, this Court directed learned Revenue Counsel to get instructions and produce proceedings referred to in paragraph-5 of the counter-affidavit vide proceedings of this Court dated 15.7.2019

5. Before proceeding further, it is necessary to set out that the instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 25 of 2006)', hereinafter 'TNVAT Act' for brevity.

6. Writ petitioner is, admittedly a dealer, registered under TNVAT Act, filing monthly returns resulting in deemed assessment.

7. Respondent perused monthly returns and found what according to respondent are omissions and defects. What is of utmost relevance is purchases effected by writ petitioner from dealers whose Registration Certificates have been cancelled, but 'Input Tax Credit' ('ITC' for brevity) has been availed by writ petitioner.

8. In other words, on perusing monthly returns filed by writ petitioner, respondent-Assessing Officer found that writ petitioner has purchased taxable goods from dealers registered under TNVAT Act, but the registration of such dealers has been cancelled. It was also noticed that writ petitioner has availed ITC on such taxable goods purchased. Therefore, respondent issued a notice dated 15.6.2015 to writ petitioner calling upon the writ petitioner to send explanation and objections, if any. This notice dated 15.6.2015 shall be referred to as a revisional notice and this revisional notice was served on the writ petitioner on 16.6.2015. Writ petitioner did not file any reply. Therefore, left with no option, respondent passed a revised assessment order dated 14.12.2017 bearing Reference No.Tin:33190482853/2011-12, which shall hereinafter be referred to as 'impugned assessment order'. To be noted, the impugned assessment order is a revised assessment order under Section 27 of TNVAT Act.

9. This Court now revert to paragraph-5 of the counter-affidavit filed by lone respondent and proceedings of this Court dated 15.7.2019, which have already been alluded to supra. Paragraph-5 of the counter-affidavit filed by lone respondent reads as follows:

"5. With regard to the averments made in para-3 of the affidavit, it is submitted that according to respondent office records the R.C of the selling dealer had been cancelled on 22.2.2011, whereas the relevant purchase had been effected in Aug'2011."

10. Proceedings made by this Court dated 15.7.2019 reads as follows:

"Mr.Adithya Reddy, learned counsel on record for writ petitioner and Mr.Haribabu, learned Additional Government Pleader on behalf of sole respondent are before this Court.

2. Adverting to paragraph-5 of the counter-affidavit, it is submitted that if the proceedings are made available in the next listing, subject to the contents, it will have a direct impact on the outcome of the writ petition.

3. Learned Additional Government Pleader to produce the proceedings referred to in paragraph-5 of the counter-affidavit in the next listing.

List on 23.7.2019."

11. Pursuant to aforesaid proceedings dated 15.7.2019 made by this Court, learned Revenue Counsel submitted today, on instructions, that with regard to cancellation of Registration Certificates of dealers from whom writ petitioner had purchased taxable goods, cancellation proceedings are dated 9.5.2012 but the cancellation of registration is with retrospective effect from 22.2.2011. As already alluded to supra, instant writ petition pertains to assessment year 2011-2012 which means it is for the period from 1.4.2011 to 31.3.2012. Therefore what follows as a sequitur and unfurls is that proceedings for cancellation of Registration Certificates of dealers from whom writ petitioner has purchased texable goods are post-assessment year i.e., post 31.3.2012. To state with specificity, it is 9.5.2012. However these proceedings cancelled Registration Certificates of dealers (from whom writ petitioner had purchased taxable goods) with effect from 22.2.2011, which is prior to commencement of the assessment year i.e., 1.4.2011.

12. Learned Revenue Counsel adverting to the impugned order, pointed out that writ petitioner ought to have sent a

reply to the revisional notice dated 15.6.2015, which was duly served on the writ petitioner on 16.6.2015. If the writ petitioner had sent a reply inter-alia giving purchase details, the predicament of piquant situation which the writ petitioner says he now finds himself in could have been averted.

13. In the light of narrative thus far, particularly owing to obtaining position that cancellation of Registration Certificates of dealers from whom writ petitioner had purchased taxable goods post-assessment year (though with retrospective effect), this Court deems it appropriate to pass the following order:

(a) Impugned revised assessment order being order dated 14.12.2017 bearing Reference No.Tin:33190482853/ 2011-12 shall now be treated as a 'Show Cause Notice' ('SCN' for brevity).

(b) Writ petitioner shall send his reply/objections to the aforesaid SCN along with 15% proposed tax payable (excluding penalty) within a fortnight from the date of receipt of a copy of this order. For the sake of specificity, it is made clear that writ petitioner shall pay along with objections/reply, 15% of Rs.2,13,948/- i.e., Rs.32,092.20 (Rupees Thirty Two Thousand Ninety Two and Paise Twenty only).

(c) On receipt of objections and 15% of proposed tax (excluding penalty), respondent shall consider the objections/ reply, redo the revised assessment and pass revised assessment order afresh.

(d) If the writ petitioner does not send objections along with 15% payment as mentioned supra, the impugned order will rescind to the character of a revised assessment order without any further reference to this Court.

(e) If the writ petitioner sends reply/ objections along with 15% in the abovesaid manner, the revised assessment order which is redone shall be communicated under Due Acknowledgment to the writ petitioner in accordance with Rules in this regard under TNVAT Act.

14. Writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

The Assistant Commissioner (CT),
Purasawalkam Assessment Circle,
F-50, First Avenue, Anna Nagar (East),
Chennai-10.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.63696
+1cc to the Special Government Pleader, S.R.No.63462

WP.No.29961 of 2018

AD(CO)
CS/13/09/2019