IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33489, 33491, 33493, 33499 & 33500 of 2018
and
W.M.P.Nos.38862, 38863, 38864, 38873 & 38875 of 2018

Tvl.S.P. & Co
Represented by its Partner
G.Palanisamy, No.1, T.Pudupalayam
Thevur Post, Sankari Taluk
Salem District. ...Petitioner (in all WPs)

vs.

The Assistant Commissioner (CT)
Sankari Assessment Circle
Sankari. ... Respondent (in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the respondent in TIN:33443225342/2011-2012, 2012-2013, 2013-2014, 2014-2015 & 2015-2016 dated 24.09.2018 and connected assessment proceeding dated 20.09.2017 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.M.Hariharan
Additional Government Pleader

C O M M O N   O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. In all these writ petitions, the petitioner is aggrieved against the orders of assessment dated 20.09.2017 and the orders dated 24.09.2018, dismissing their applications filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, relating to assessment years 2011-2012 to 2015-2016.

3. Mr.R.Senniappan, learned counsel for the petitioner contended as follows:

There were two issues before the Assessing Officer viz., mis-match and that the other end dealer did not pay tax. Insofar as mis-match issue is concerned, the Assessing Officer has to follow the guidelines/directions issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343) and then only he can conclude the assessment in respect of that issue. Likewise, in respect of the other issue viz., the other end dealer did not pay the tax, it cannot be a reason for imposing the tax on the petitioner, that too, without affording an opportunity of personal hearing. When the petitioner pointed out the above defects and filed the applications under Section 84 of the TNVAT Act, 2006, the Assessing Officer has dismissed those applications, without assigning any independent reasons and findings. Therefore, the impugned orders are liable to be set aside.

4. The learned Additional Government Pleader, on the other hand, contended that the petitioner did not file their objections to the notice of proposal and therefore, the Assessing Officer has no other go except to pass the impugned orders of assessment. Likewise, the learned Additional Government Pleader contended that the Assessing Officer has rightly rejected the applications filed under Section 84 of the TNVAT Act, 2006, as not entertainable. However, the learned Additional Government Pleader is not disputing the fact that the issue involved in these writ petitions are mis-match issue and that the other end dealer did not pay the tax.

5. Heard both sides.

6. There is no dispute to the fact that one of the issue dealt with by the Assessing Officer viz., mis-match issue has to be dealt with and orders of assessment should be passed only after following the procedures/guidelines issued by this Court in JKM Graphics Case. Admittedly, in these case, the orders of assessment were passed after pronouncing the common order passed in JKM Graphics Case. Therefore, the Assessing Officer ought to have considered the mis-match issue in the light of the directions/guidelines issued in JKM Graphics Case. In this case, it has not been done so. Likewise, in respect of the other issue viz., the other end dealer did not pay the tax, the petitioner has raised some objections and filed the applications under Section 84 of the TNVAT Act, 2006. Perusal of the orders dated 24.09.2018 passed under Section 84 of the TNVAT Act, 2006, would clearly show that the Assessing Officer has chosen to reject the applications, without expressing any view on the merits of the contentions raised by the petitioner. In other

words, the said orders passed under Section 84 of the TNVAT Act, 2006, are non-speaking orders and thus, cannot be sustained. Therefore, this Court is inclined to interfere with the impugned orders of assessment, by remitting the matter back to the Assessing Officer to re-do the assessment afresh after following the procedures/guidelines issued in JKM Graphics Case. Likewise, the Assessing Officer shall also consider the other issue also afresh and pass orders accordingly.

7. Accordingly, these writ petitions are allowed and the impugned orders of assessment as well as the orders passed under Section 84 of the TNVAT Act, 2006, are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment. Since the petitioner has not filed any reply to the notice of proposal, this Court is inclined to impose some terms on the petitioner as well for remitting the matter to the Assessing Officer.

(a) The petitioner shall pay 15% of the tax liability for each assessment year along with their reply within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such payment of 15% tax liability along with reply, the Assessing Officer shall inform the date of personal hearing to the petitioner.

(c) On completion of personal hearing, the Assessing Officer shall pass the orders of assessment on merits and in accordance with law, by following the guidelines/directions issued in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343), while considering the mis-match issue.

(d) The whole exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order.

Needless to say that the Assessing Officer has to pass the orders of assessment by independent application of mind, totally uninfluenced by the report of the Enforcement Officials, since such report is to be considered as one of the material for assessment and not the only material for the assessment. No costs. Connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1.The Assistant Commissioner (CT)
Sankari Assessment Circle,
Sankari.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.1345
+1cc to the Special Government Pleader, S.R.No.1138

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33493, 33499 & 33500 of 2018

ssi(CO)
kak(15/02/2019)