BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.06.2019**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.13340 and 13344 of 2015
and
M.P.(MD)No.1 and 1 of 2015

Tvl.M.Muthuraj (HUF),
Represented by its Karta / Power of Attorney Holder,
M.Anandavel,
S/o.M.Muthuraj,
No.763, Virudhunagar Pettai,
Periyakulam Road,
Theni - 625 531. ... Petitioner in both petitions

/Vs./

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (CT) - II,
Theni II Assessment Circle,
Commercial Taxes Buildings,
Bangalamedu, Madurai Road,
Theni - 625 531. ...Respondents in both petitions

COMMON PRAYER:- Writ Petitions - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd respondent in TIN:33745180406/2007-08 and 2008-09 ante dated as 30.06.2015 and quash the same and to consequently direct the 2nd respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.A.Thiyagarajan
Government Advocate
(in both petitions)

COMMON ORDER

The petitioner challenges orders of assessment dated 30.06.2015 passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2007-08 and 2008-09. Two main grounds have been raised and pursued by Mr.Rooban, learned counsel appearing for the petitioner. The first is violation of principles of natural justice. He points out that in response to a notice dated 07.04.2015, the petitioner had sent a reply notice dated 11.04.2015. Thereafter, reply dated 01.06.2015 was also filed by the petitioner setting out various explanations in regard to the proposals. Discrepancies were pointed out as between the figures adopted in show cause notice and the financials of the petitioner. It was in such circumstances, when the petitioner was expecting a notice of personal hearing that he received the order dated 30.06.2015, impugned in this writ petition.

2. According to the petitioner, this order has been ante-dated. The petitioner has placed on record a detailed written submission dated 01.07.2015, wherein he had sought copies of the Intranet website report, MIS report and enclosures in the returns of the selling/purchasing dealer as well as invoices relied upon by the assessing authority, seeking an opportunity to rebut the same and advance his submissions. An additional submission dated 20.07.2015 was also filed, received in the office of the Assistant Commissioner (CT) vide acknowledgment card placed at page number 17 of the typed set of papers. The contention regarding ante-dating of the order is based on a certificate issued by the assessing officer to the effect that the impugned order dated 30.06.2015 has been served upon the petitioner on 16.07.2015. Being a local assessee, the delay of 16 days in service of the order, according to the petitioner, is unexplained and not bonafide.

3. On merits, it is pointed out that the entire assessment is based on details that have been shared over the intranet website of the Commercial Taxes Department. Sales suppression has been alleged and confirmed only on that basis. Further more, comparison with the consignee check-post movement and MIS reports have resulted in further additions, along with penalty at 100%.

4. Though no counter has been filed by the Department, Mr.A.Thiyagarajan, learned Government Advocate is armed with the instructions of the assessing officer. He also produces a copy of Circular No.3 / 2019 dated 18.01.2019, dealing with various issues including mismatch at Paragraph (c), as follows:

> '*c) Where a proposal received from the Enforcement Wing/ISIC involves mismatch of ITC and other issues, the issues other than mismatch of ITC can be finalized by the assessing authority leaving the mismatch issue pending until a mechanism in this regard is evolved. However, notices shall be issued for all the cases involving mismatch of ITC to keep the issue alive until it is resolved and a list of such cases shall be maintained in the respective assessment circle, Territorial JC and DC offices. A*

monthly abstract of such cases along with revenue involved shall be prepared and made available to higher authorities for verification as and when called for.'

5. In line with the above, issues relating to mismatch are to be kept alive, till such time an appropriate mechanism is evolved for addressing the same. The direction for evolving such a mechanism arises from the order of the learned Single Judge in the case of *JKM Graphics Solutions Private Limited vs. The Commercial Tax Officer* [1999 VST 343], wherein, at paragraph 57, the learned Single Judge states as follows:

> '57.*Hence, for all the above reasons, all the Writ Petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharashtra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.'*

6. This mechanism is yet to be evolved and I am informed that the Department has also filed a review before the learned single judge in this regard.

7. Be that as it may, I am of the view that in the interests of justice, have not been served in this case particularly since the assessment has been framed based on materials that were not provided to the assessee. The impugned assessments are thus set aside and the matters remanded to the file of the assessing authority for completion *de novo*, after affording due opportunity to the petitioner and in accordance with law.

8. These Writ Petitions are allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (CT) - II,
Theni II Assessment Circle, Commercial Taxes Buildings,
Bangalamedu, Madurai Road, Theni - 625 531

+1 CC to M/s.B.ROOBAN, Advocate (SR-71621[F] dated 26/06/2019)
+1 CC to the Special Government Pleader S.R.No.72173

Common Order made in
W.P.(MD)No.13340 and 13344 of 2015
Dated:
26.06.2019

AM/SAR/09.08.2019/ 4P 5C