BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.04.2019**

CORAM :

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.2388 of 2017
and
W.M.P.(MD)No.2006 of 2017

M/s.Arun Marketers,
Represented by its Partner D.Anand,
38-A, Ponnusamypuram Street,
Thiurnagaram,
Aruppukottai. ... Petitioner

/Vs./

The Commercial Tax Officer (FAC),
Aruppukottai Assessment Circle,
Commercial Tax Buildings,
Aruppukottai. ... Respondent

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33415803279/2014-15 dated 07.12.2016 and to quash the same as wholly without jurisdiction and direct the respondent to pass assessment order afresh after furnishing records which lead them to make an assessment including the opportunity of being heard to the petitioner within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The instant writ petition has been filed challenging the assessment order dated 07.12.2016 passed by the respondent in TIN 33415803279/2014-15.

2. It is the case of the petitioner that they are a registered dealer under the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as "the TNVAT Act"]. It is their case that they have been filing monthly returns and paying tax regularly and the respondent has also accepted their monthly returns under Section 22 (2) of the TNVAT Act. But, according to them, the respondent proposed to revise the assessment for the year 2014-15 through a pre-revision notice dated 10.08.2016 on the ground of (a) stock

variation, (b) the dealer had effected the purchase, but not represented in their returns, (c) escaped turnover [non-payment of tax due].

3. It is the case of the petitioner that on receipt of the pre-revision notice dated 10.08.2016, the petitioner personally handed over all the records pertaining to the alleged claim made by the respondent under pre-revision notice dated 10.08.2016 and categorically denied that there was any suppression of purchase or there was any stock variation.

4. According to the petitioner, they had also produced the letter sent by the other end dealer, wherein the other end dealer had categorically stated that by mistake, they had reported to the respondent that the alleged sales mentioned in the pre-revision notice dated 10.08.2016 was made to the petitioner. But, the said sale was infact effected to various other parties.

5. It is the case of the petitioner that without cross-verification from the other end seller and without giving adequate opportunity to the petitioner, the impugned assessment order has been passed. In such circumstances, the instant writ petition has been filed.

6. Heard Mr.S.Karunakar, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent.

7. The learned counsel appearing for the petitioner drew the attention of this Court to the judgment of the learned Single Judge of this Court in the case of **Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai**, reported in **2017 (99) VST 343** and submitted that in case of mismatch, the respondent ought to have held an enquiry and cross-verified with the other end seller about the alleged sale to the petitioner. According to him, in the instant case, no cross-verification was done and therefore, the respondent has violated the principles of natural justice. Further, it is their case that as regards stock variation, the alleged stock variation pertains to the year 2014-15, whereas inspection was carried out by the respondent at the business premises of the petitioner only in the year 2016, after a lapse of almost 1 ½ years. It is the case of the petitioner that stock varies from time to time and it cannot be computed after lapse of a considerable period of time.

8. Per contra, the learned Additional Government Pleader would submit that the impugned assessment order is a well considered order. According to him, adequate opportunity was given to the petitioner to raise all objections available to them under law. He also pointed out to the observations recorded in the impugned assessment order, wherein it has been observed that the petitioner has not sent any reply to the pre-revision notice sent by the

respondent, despite receipt of the same. Further, he also pointed out that personal hearing was also afforded to the petitioner, which was also not made use of by the petitioner in the revision of assessment proceedings. Therefore, being a well considered order according to him, the only remedy available to the petitioner is to file an appeal under Section 51 of the TNVAT Act.

Discussion:

9. It is now well settled that in case of mismatch between the details shown in the dealer's return and the details of dealer at other end available in the departmental website, cross-verification from the other end dealer is mandatory as per the judgment of this Court in the case of **Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai**, reported in **2017 (99) VST 343.**

10. In the instant case, no such cross-verification was done by the respondent before passing the impugned assessment order. As rightly pointed out by the learned counsel appearing for the petitioner, stocks vary from time to time. But, the respondent had inspected the business premises of the petitioner on 24.05.2016 for the assessment year 2014-15 and found that there was stock variation from the actual stocks.

11. This Court is in agreement with the submission made by the learned counsel appearing for the petitioner that the respondent cannot come to the conclusion that there was stock variation after a lapse of almost 1½ years, based on the inspection report at the business premises of the petitioner on 24.05.2016, as the stocks vary from time to time. The respondent has not applied his mind independently or through any independent source of information before passing the impugned assessment order and has blindly accepted the inspection report submitted by the Enforcement Wing Officers of the respondent.

12. For the foregoing reasons, this Court is of the considered view that the respondent has not followed the binding decision of this Court in the case of **Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai**, reported in **2017 (99) VST 343** and has also not applied his mind independently before passing the impugned assessment order.

13. In the result, the impugned assessment order dated 07.12.2016 passed in TIN 33415803279/2014-15 is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent, after giving adequate opportunity to the petitioner including granting them the right of personal hearing, shall pass final orders, within a period of eight weeks from the date of receipt of a copy of this order.

14. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Commercial Tax Officer (FAC),
Aruppukottai Assessment Circle,
Commercial Tax Buildings,
Aruppukottai.

+1CC TO MR.S.KARUNAKAR, Advocate Sr. No. 61572

Order made in
W.P.(MD)No.2388 of 2017
(1/2)
Dated: 22.04.2019

DKS(CO)
TR (22.05.2019) 4P 3C