IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 14.09.2020

PRONOUNCED ON : 29.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.3265 & 3266 of 2013
and
M.P.Nos.1 & 1 of 2013

M/s.Kaleesuwari Refinery Private Ltd.,
No.53, Rajasekaran Street,
Mylapore, Chennai-600 004. ...Petitioner in both W.Ps.

Vs.

1. The Assistant Commissioner (CT),
Washermenpet II Assessment Circle,
Chennai-600 081.

2. The Joint Commissopmer (CT),
Chennai (East) Division,
Chennai-600 006. ...Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TNGST/1280956/2002-03 & 2003-04 and to quash the orders dated 31.12.2012 respectively.

For Petitioner : Mr.R.L.Ramani, Sr. Counsel
For Me,B.Raveendran
For Respondents: Mr.R.Swarnavel, GA (T)

C O M M O N   O R D E R

With the consent of both parties, the present Writ Petitions are heard through Video Conferencing on 14.09.2020.

2. The petitioner challenges the reassessment order passed by the first respondent herein for the Assessment Year 2002-03 in W.P.No.3265 of 2013 and the original assessment order for the Assessment Year 2003-04 in W.P.No.3266 of 2013. Since the grounds raised in both these Writ Petitions are predominantly common, both the Writ Petitions are disposed of, through a common order.

3. The petitioner herein is a dealer engaged in the manufacture of edible oil and effects purchases of edible oil from in and out of the State and in turn effects sales. The original assessment for the Assessment Year for TNGST 2002-03 was completed by the first respondent based on the returns filed and upon verification of accounts. Between 08.10.2003 and 14.10.2003, the Economic Wing Officers had conducted an inspection and accordingly, a revision of assessment notice dated 21.02.2008 was issued, contending that among others, several lab reports were missing in respect of the products dealt by the petitioner. The petitioner had challenged the notice before this Court in W.P.No.5278 of 2008 and by an order dated 29.02.2008, this Court had directed the petitioner to file his objections with the consequential direction to the respondents to consider them. It was also observed in the order that the respondent's conclusion of suppression if arrived at, shall not be only on the basis of the fact that the petitioner has not filed his lab reports serially, if otherwise, the petitioner is able to show that there is no suppression or no relevant records are missing. Accordingly, the petitioner had filed his objections on 19.03.2008.

4. Subsequently, the first respondent issued a pre-assessment notice dated 29.10.2010 for TNGST 2003-04 proposing to make a best assessment judgment on the basis of the missing lab reports. Again, the petitioner had challenged the notice in W.P.No.26259 of 2010 and this Court in its order dated 23.11.2010, had directed the first respondent to consider the petitioner's claim, in terms of its earlier order passed in W.P.No.5278 of 2008. However, two separate notices dated 07.12.2012 for Assessment Years for TNGST 2002-03 and 2003-04 were issued, alleging sales suppression on the basis of the missing lab reports.

5. In the said notices, three defects were pointed out namely, i) In the Goods Receipt Notes (GRN), there is an inference that the GRN corresponding to the missing lab reports has to be accounted for; ii) the production-cum-stock register accounts in Form XXX as prescribed in Rule 26(14) of the TNGST Rules was not maintained; and iii) separate stock registers for local and interstate purchases were not produced before the Inspecting Officers.

6. In the mean time, from the information obtained through RTI, the petitioner was appraised that the Assessment Authority had forwarded a deviation proposal to the second respondent stating that there is no material to establish missing suppression on the basis of the missing lab reports, which came to be rejected by the second respondent, with further

instructions to implement the D3 proposals. The second deviation proposal of the first respondent was also rejected by the second respondent. In this background, the petitioner had challenged the notices dated 07.02.2012 in W.P.No.22395 & 22396 of 2012 and this Court, in its order dated 09.10.2012, directed the first respondent to consider the petitioner's objections and pass appropriate orders. Consequently, the petitioner had filed their further objections on 24.12.2012, which came to be rejected on 31.12.2012 for both the Assessment Years 2002-03 & 2003-04, thereby confirming the proposals on the basis of the missing lab reports, apart from levying penalty. Challenging the same, the present Writ Petitions have been filed.

7. Heard Mr.R.L.Ramani, learned Senior counsel for the petitioner and Mr.R.Swarnavel, learned Government Advocate (Taxes) appearing on behalf of the respondents.

8. As rightly pointed by the learned Senior counsel for the petitioner, both the reassessment orders for the Assessment Years 2002-03 and 2003-04 emanates from the inspection conducted in the petitioner's place of business between 08.10.2003 and 14.10.2004. Apparently, the inspection relates to the Assessment Year 2003-04. However, the reports that emanated from the inspection has been applied to the Assessment Year 2002-2003 also, which cannot be countenanced.

9. Moreover, when the original revision notice came to be challenged in W.P.No.5278 of 2008, this Court had held that the suppression cannot be arrived at solely on the basis of the fact that the lab reports are missing, if otherwise, the petitioner is able to show that there is no suppression or no relevant records are missing. The petitioner, had thereafter submitted their objections establishing that there was no suppression and no relevant records were missing. The Assessment Authority had taken into consideration the directions issued by this Court in W.P.No.5278 of 2008 and submitted deviation proposals to the second respondent stating that there is no other material to establish suppression on the basis of the missing lab reports, which was rejected by the second respondent on 11.10.2010, thereby directing the first respondent to implement the D3 proposals. The second deviation proposal dated 14.01.2011 was also rejected. Thus, it is seen that though the Assessing Authority was of the view that the D3 proposals requires to be deviated, he had no other option, except to carry out the directions of the superior officers.

10. In this background, this Court, in its order dated 07.02.2012 made in W.P.No.22395 & 22396 of 2012, had also directed the Assessing Authority, to consider the petitioner's objections, without being influenced by the adverse remarks made

by the second respondent while rejecting the first respondent's deviation proposals. However, the present impugned orders have been passed without giving any sanctity to the observations made by this Court in W.P.No.5278 of 2008, as well as, in W.P.Nos.22395 & W.P.No.22396 of 2012.

11. Incidentally, when the second respondent herein had rejected the deviation report on 31.01.2012 for the Assessment Year 2002-03, he had assigned the reasons for the rejection in para 4 and 5 of the said order and based on these reasons, it was held that the D3 proposals is not merely passed on the missing lab reports but the dealers failed to establish their case with necessary records and documentary evidence. As stated earlier, this Court had subsequently directed the Authority to independently pass orders on the petitioner's subsequent objections without being influenced by the orders of the superior officers. However, in the impugned order passed by the first respondent for revision of assessment for the year 2002-03, the Authority had simply reiterated the same remarks of his superior officer, namely, the second respondent, made in his order dated 31.01.2012, rejecting the second deviation report. Apart from reiterating the views of the second respondent, there is absolutely no independent reasoning adduced by the first respondent. As a matter of fact, the first respondent had employed the 'copy and paste' technology in the computer and extracted the orders of the second respondent in the present impugned orders, in verbatim.

12. It would be useful to make a reference to various orders of this Court holding that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which such a view has been taken are in the cases of Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another reported in 2006 (146) STC 642 (MAD) and Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri and another reported in 2015 (81) VST 560 (MAD). Incidentally, the aforesaid orders have now culminated into a Circular issued by the Commissioner of State Tax in Circular No.3, dated 18.01.2019 in which guidelines have been issued to the Assessing Authority to independently deviate from the proposals of the Enforcement Wing Officers, without seeking their approval.

13. In the present case, though the Assessing Officer were originally of the view that D3 proposals can be deviated and inspite of the fact that this Court had directed the Assessing Authority to independently take a view in the issues, the first respondent had, without any doubt, strictly adhered to the D3

proposals and the orders of rejection passed by the second respondent to the deviation proposals and came to a conclusion in the impugned orders.

14. It is stated by the learned Senior counsel for the petitioner that the lab reports and the GRN are internal records maintained by them to monitor edible oil purchases and are not records to be maintained statutorily. Likewise, it was alleged by the respondents that the petitioner had not maintained the register as per the proviso to Rule 26 (14) of the TNGST Rules. It is permissible to maintain the production-cum-stock accounts in Form XXX or in any other form, as long as it contained all the necessary information. With regard to the missing lab reports, the Assessing Authority had concluded that the D3 proposals does not clearly establish the relevance of the lab report either for purchase or sale and in view of the fact that the lab reports is not a document to be maintained under the TNGST Act and in view of the directions of this Court in W.P.No.5278 of 2008, the missing lab report cannot be treated as sales suppressions.

15. The learned Government Advocate submitted that during the course of the impugned proceedings before the first respondent, the dealers have not produced any records in support of their earlier objections. This was opposed by the learned Senior for the petitioner. I find some force in the submissions of the learned Senior counsel that during the original assessment, the first respondent, Assessing Authority had admitted that the day book, ledger, purchase bills, etc., were produced by the petitioner. Likewise, in the first deviation report forwarded by the first respondent for the Assessment Year 2002-03 dated 17.06.2008, the remarks of the processing officer evidences inspection of the stock statement register, which was maintained to monitor the day-to-day productions, purchases, sales and stock production. In the second deviation report of the first respondent for the Assessment Year 2002-03 dated 14.01.2011, it is recorded that the accounts of the dealers for the year 2002-03 were checked. Accordingly, the first respondent had verified every aspect of the issue relating to the turnover of the dealers and hence the submissions of the learned Government Advocate that the dealers have failed to produce the relevant records during the impugned assessment proceedings, cannot be the sole ground in rejecting the petitioner's claim.

16. In view of the decision taken in the impugned proceedings that there was sales suppressions and the consequential levy of tax, the respondent had also levied penalty under Section 16(2)(c), as well as, Section 23 of the TNVAT Act. Now, that this Court has held that the impugned

orders itself cannot be sustained, the consequential penalty also requires to be set aside.

17. For all the foregoing reasons, the impugned proceedings in TNGST/1280956/2002-03 & 2003-04 dated 31.12.2012 stands quashed. Consequently, the Writ Petitions are allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP
To

1. The Assistant Commissioner (CT),
   Washermenpet II Assessment Circle,
   Chennai-600 081.

2. The Joint Commissopmer (CT),
   Chennai (East) Division,
   Chennai-600 006.

+1cc to The Special Government Pleader, sr no.35128

W.P.Nos.3265 & 3266 of 2013
and
M.P.Nos.1 & 1 of 2013

KK(CO)
RMP(02/12/2020)