IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. Nos.10605, 10610 & 10615 of 2020
and
WMP. Nos.12885, 12887, 12889, 12891, 12893 & 12896 of 2020

M/s.Jansons Industries Limited
Represented by its General Manager - J. Srinivasaraghavan
No.129 SND Road Tiruchengode - 637 211
Namakkal District. ... Petitioner in all WPs

Vs

The State Tax Officer
Tiruchengode Town Circle, Tiruchengode,
Namakkal District. ... Respondent in all WPs

Prayer in W.P. No.10605 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records on the file of the respondent in its impugned proceedings made in TIN 33783181796/2007-08 dated 31.12.2019 and the consequential order passed by the respondent in TIN. 33783181796/2007-08 dated 23.06.2020 rejecting the petition filed under section 84 of the Act dated 28.01.2020 and to quash the same as illegal and contrary to the scheme of the Act and further direct the respondent herein to re-consider the petition filed by the petitioner dated 28.01.2020 under Section 84 of the TNVAT Act 2006 and pass afresh order relating the assessment year 2007-08 in accordance with law.

Prayer in W.P. No.10610 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records on the file of the respondent in its impugned proceedings made in TIN 33783181796/2009-10 dated 31.12.2019 and the consequential order passed by the respondent in TIN. 33783181796/2009-10 dated 23.06.2020 rejecting the petition filed under section 84 of the Act dated 28.01.2020 and to quash the same as illegal and contrary to the scheme of the Act and further direct the respondent herein to re-consider the petition filed by the petitioner dated 28.01.2020 under Section 84 of the TNVAT Act 2006 and pass afresh order relating the assessment year 2009-10 in accordance with law.

Prayer in W.P. No.10615 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records on the file of the respondent in its impugned proceedings made in TIN 33783181796/2010-11 dated 31.12.2019 and the consequential order passed by the respondent in TIN. 33783181796/2010-11 dated 23.06.2020 rejecting the petition filed under section 84 of the Act dated 28.01.2020 and to quash the same as illegal and contrary to the scheme of the Act and further direct the respondent herein to re-consider the petition filed by the petitioner dated 28.01.2020 under Section 84 of the TNVAT Act 2006 and pass afresh order relating the assessment year 2009-10 in accordance with law.

For Petitioner : Mr.Rajasekar fo all Wps

For Respondent : Mr.ANR.Jayapratap,
G.A. for all WPs

C O M M O N O R D E R

Mr.ANRJayaprathap, learned Government Advocate accepts notice for the respondent and is armed with instructions to proceed with the matter. Since the issue involved falls within a short compass, by consent of both learned counsel, this matter is disposed finally even at the stage of admission.

2. The challenge is to an order dated 23,.06.2020, styled as 'intimation', disposing the application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

3. The petitioner had received pre-assessment notices for the periods 2007-08, 2009-10 and 2010-11, all dated 28.02.2018, proposing reversal of Input Tax Credit (ITC) in terms of Section 19(5)(c) and (a) of the Act. Despite objections filed by the petitioner, orders of assessment came to be passed by the Assessing Officer on 31.12.2019 . In all three years, the reversal was in excess of what had been proposed in the pre-assessment notices. Since the petitioner was of the view that the orders suffered from mistakes apparent on the face of the record, petitions seeking rectification of the same in terms of Section 84 were filed. These petitions are dated 28.01.2020. Interalia, the petitioner specifically sought an opportunity of personal hearing, if its written response did not convince the Assessing Officer in its favour.

4. Even during the pendency of the application, a recovery notice was issued on 10.03.2020 and on 23.06.2020, the impugned orders are passed in the following terms:

TIN 33783181796/2007-08 o/O the State Tax Officer,
Tiruchengode Town.
Date: 23.06.2020

INTIMATION

To
Tvl.Jansons Industries Limited,
No.129, S.N.D. Road,
Tiruchengode - 637211.

Sir,

Ref: 1. This Office Notice in TIN 33783181796/2007-08, Dated: 28.02.2019
2. This Office Proceedings in TIN 33783181796/2007-08, Dated: 31.12.2019
3. Your application in TIN 33783181796/2007-08, Dated: 28.01.2020

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Please refer the reference cited.

2. You are informed that the issue of reversal of ITC as per existing formula had to be worked out taking into account the whole turnover of the business for that year. From the perusal of the monthly returns filed by you it is revealed that the reversal is made without any basis and there are no explanations in this matter. Further the working now filed by you is not based on the prescribed formula.

In the overall circumstances, your request in this case does not fall under any error apparent on the fact of record as stood under section 84 of the TNVAT Act 2006 and as such your respect for the revision of assessment under this section id not admissible. Therefore your request for revision is hereby ordered to be rejected.

Sd/-
State Tax Officer,
Tiruchengode Town.

5. The impugned orders as above are clearly contrary to law insofar as they are non-speaking and have been issued in violation of principles of natural justice, despite the specific request of the petitioner for personal hearing. Though the provisions of Section 84 of the Act do not specifically mandate an opportunity of personal hearing, except if the rectification is initiated suo motu at the instance of the Assessing Officer, it goes without saying that for fair disposal of a matter, an assessee/dealer should be heard in person in order to appreciate the contentions put forth prior to conclusion of the

proceedings, all the more in a case where the dealer has specifically sought an opportunity of personal hearing.

6. I may take a cue in this regard from the Circular of the Commissioner of Commercial Tax bearing No.7 of 2014 dated 03.02.2014, where the Commissioner has instructed all the Assessing Officers to hear the assesses prior to finalization of proceedings in the following terms:

Circular No. 7/2014 BB1/3589/2014 Dated 3rd February, 2014.

Office of the Principal Secretary &

Commissioner of Commercial Taxes

Chepauk, Chennai -600 005.

Sub: Writ Petition / writ Appeal/Tax Case (Revision) - Disposal of cases - Meeting with Government Advocate - Certain guidelines and circular instructions issued.

1. During the course of meeting with the Law Officers of Madras high Court on 30.01.2014, it has been represented by them, that many Assessing Officers are passing orders without giving reasonable opportunity to dealers and violating the Principles of natural justice, which has resulted in mounting numbers of writ Petitions in the High Court leading to interim stay restraining the authorities proceeding further pursuant to the orders passed. After a considerable period, the writ petitions were disposed of by setting aside the assessment proceedings with direction to the authorities to take necessary action in accordance with law.

2 it is also further represented that in some of the cases, objections raised by the dealers on the pre-assessment revision notices are not properly examined/ discussed in the order and assessment orders simply state " that the objections filed by the dealers are overruled and proposals are confirmed", such type of orders will not also stand in the test of law. further, where there is a provision in the Act, requiring the dealer of being given a reasonable opportunity or being heard, which has also not been followed in many cases.

3, in the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Commissioners/ Deputy commissioners should verity at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.

a) Passing of orders:

Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.

i) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.

ii) objections filed by the dealer on the pre assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised, in short, the speaking order which is complete shall be passed.

iii) As the provision in the TNVAT Act stipulates the conditions or granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.

7. In the light of the discussion as aforesaid the impugned assessments and orders under Section 84 are set aside and will be redone de novo by the Assessing Officer. The petitioner will be heard by the Officer on Wednesday, the 9th of September, 2020 at 10.30 a.m., either virtually or by way of physical hearing as may be mutually convenient to the parties, to be communicated to the petitioner and orders shall be passed within a period of four (4) weeks from 09.09.2020.

8. These writ petitions are disposed in the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Tiruchengode Town Circle, Tiruchengode,
Namakkal District.

+1cc to the Special Government Pleader Sr.27453

W.P. Nos.10605, 10610 & 10615 of 2020
and
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nrl[co]
srg 08/10/2020