IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.30347, 30350 & 30351 of 2019
and
WMP. Nos.30337, 30338 & 30339 of 2019

V.Sakthivel,
Proprietor, Sri Manakula Vinayagar Stores,
5 Market Committee Complex, Diversion Road,
Panruti - 607 106. ..Petitioner in all WPs

Vs.

State Tax Officer,
Panruti (Town) - 607 106. ..Respondent in all WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records of the proceeding dated 30.08.2019 in TIN No. 33634481145/ 2011-12, 2012-13 and 2013-14 of the respondent under the Tamil Nadu Value Added Tax Act, 2006, quash the same.

For Petitioner : Mr.Adithya Reddy for all WPs

For Respondent : Mrs.G.Dhanamadhiri
Government Advocate for all WPs.

C O M M O N O R D E R

Heard Mr.Adithya Reddy, learned counsel for the HeaHhehrhrpetitioner and Ms.G.Dhanamadhri, learned Government Advocate for the respondent.

2. The petitioner is in the second round of litigation. In regard to three orders of assessment passed for the periods 2011-12, 2012-13 and 2013-14, the petitioner had filed writ petition Nos. 32646, 32646 & 32690 of 2016 challenging the same on various grounds. Vide order dated 19.09.2016, the writ petitions were disposed by this Court holding that the impugned orders had been passed in violation of the principles of natural

justice. However, the orders were not set aside but the violation was sought to be corrected by permitting the petitioner to approach the Assessing Officer within one week from date of receipt of a copy of that order. The Officer was directed to furnish all particulars as available with him in regard to the name of the selling/purchasing dealers, their TIN numbers, value of goods and other relevant particulars. The petitioner was to be granted an opportunity of personal hearing and also was permitted to file additional objections within a period fixed by the Court prior to assessments being framed afresh by the officer.

3. At the threshold, there is a violation of the timeframes fixed by this Court in the earlier round order in so far as the petitioner appeared before the Assessing Officer only on 09.03.2017. Learned counsel for the petitioner would seek to explain away the same stating that the Court had permitted the petitioner to appear within a week from date of receipt of a copy of the order and since the order was received only on 06.03.2017 his representation on 09.03.2017 was within the time frame stipulated. However, the copy application was itself made only on 03.03.2017 after a period of six months from the date passing of the order and thus the petitioner cannot take advantage of the elapse in time.

4. Be that as it may, after receipt of the representation dated 09.03.2017, the Assessing Officer issued a notice dated 27.05.2019, two years and two months after receipt of the petitioner’s letter, setting out the pre-assessment proposals and calling for objections in regard to the same. The petitioner objected to the proposals on 10.06.2019, rejecting which the impugned orders have come to be passed.

5. The issue on merits relates to a mismatch between the turnover disclosed in the returns filed by the petitioner and those in the annexures of the selling/purchasing dealers. The petitioner had initially filed ‘nil’ returns and has thereafter, beyond the times stipulated under Rule 7(9) of the Tamil Nadu Value Added Tax Rules, 2007, filed monthly returns returning turnover to tax and also seeking Input Tax Credit in relation to the same.

6. The original assessments in these cases are dated 14.09.2015 and 28.03.2016 and they have been set aside on 19.09.2016. This Court in M/s.JKM Graphics Solutions Private Limited V. Commercial Tax Officer (99 VST 343) by order dated 01.03.2017 considered in detail the issue of mismatch between the assessees’ returns and the returns of the selling/purchasing dealers and has suggested setting up of a suitable central mechanism within the Department to delve into various aspects of mismatch. Pursuant thereto, a Circular was issued by the

Commissioner bearing No.3 of 2019 (Q1/39643/2018 dated 18.01.2019), wherein at paragraph (c) the Commissioner directs the Authorities to keep assessments involving the issue of mismatch in abeyance, however issuing pre-assessment notices in time in order that the assessments are kept alive until such time the central mechanism is put in place. The relevant portion of the said circular reads 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.'

7. In this case, the Assessing Officer has rejected the benefit of Circular No.3 of 2019 on the ground that the petitioners' returns had not disclosed any turnover at all. However, the petitioner has filed revised returns as noticed by this Court in its order dated 19.09.2016 at paragraph 4, where the learned Single Judge states as follows:

> 4……….. The petitioner submitted a letter dated 26.3.2015, by stating that he is a small dealer and on account of health condition, he could not file the monthly returns in time and along with the letter dated 13.4.2015, the petitioner filed monthly returns for the relevant periods and requested the respondent to consider the same and allow the claim of ITC. The respondent examined the returns and appears to have once again made a verification/comparison with the data available in the Department web-site and came to the conclusion that the turnover reported by the petitioner in the monthly returns is lesser than the purchase details gathered from the Department web-site.

8. It is after the aforesaid observation that the learned Single Judge has opined that no opportunity was extended to the petitioner to substantiate the turnover reported by him in the revised returns to correct which, an opportunity was directed to be extended to the petitioner. Neither the petitioner nor the Department has availed of this opportunity as extended by the

court, and there has been considerable delay on the part of both the parties.

9. In the facts and circumstances as noted above, I believe it is appropriate that the impugned orders be set aside with a direction to the Assessing Officer to redo the assessments de novo and in accordance with law taking note of the revised returns filed by the petitioner under cover of letter dated 26.03.2015 and bearing in mind the directions of the Commissioner in Circular No.3 of 2019.

10. These writ petitions are disposed as above. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

State Tax Officer,
Panruti (Town) - 607 106.

+1cc to Special Government Pleader(Taxes), S.R.No.26149

W.P. Nos.30347, 30350 & 30351 of 2019
and
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PVS(CO)

KKV/24/08/2020