BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2020

CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.1523 of 2020
and
W.M.P.(MD).No.1226 of 2020

M/s.Anbu Enterprises,
represented by its Proprietor, V.Anbalagan ...Petitioner

Vs.

The State Tax Officer (ST),
Thanjavur-I Assessement Circle,
Sachidananda Moopanar Road, Thanjavur. ...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33873802983/2017-2018 dated 06.12.2019 and quash the same as illegal, arbitrary and against the principles of natural justice and also against the directions given by this Court in W.P.No.12404 of 2018 dated 12.06.2018.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondent.

2.The petitioner is an assessee under the respondent. The petitioner had been visited with the impugned order dated 06.12.2019 in which the following order has been passed:-

"*In view of the above the assessement already made is hereby confirmed and orders passed under Section 22(4) of the TNVAT Act as detailed below:-*

Total Turnover refixed	*Rs.3,63,22,898*
Taxable Turnover refixed	*Rs.3,63,22,898*
Rs.2,90,58,318 @ 14.5%	*Rs. 42,13,456*
Rs. 72,64,580 @ 5%	*Rs. 3,63,229*
	Rs. 45,76,685

Penalty u/s 22(5) of the TNVAT Act 2006 is also levied.

	TAX	*27(5) PENALTY*
DUE	*Rs.45,76,685*	*Rs.68,65,028*
PAID	*Rs. 1,00,000*	*Rs.Nil*
BALANCE	*Rs.44,76,685/-*	*Rs.68,65,028*

Demand notice in Form 'O' & 'RR' are issued."

The same is questioned in these writ proceedings.

3.The learned counsel appearing for the petitioner pointed out that this is second round of litigation. When the petitioner was visited with an adverse order dated 30th April 2018, he filed W.P.(MD).No.12404 of 2018. The said Writ Petition was allowed with the following directions:-

> *"4.From the perusal of the impugned order, it is clear that no personal hearing was afforded to the petitioner pursuant to the objections made by the petitioner. Therefore, the impugned order dated 30.04.2018 is set aside and a direction is issued to the respondent to conduct enquiry as to the information found in the website, as observed by th learned Single Judge above, following the decision of this Court in JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle (99 VST 343). The respondent is directed to conduct an enquiry and send the proposal to the petitioner with all details. Furthermore, as per Section 22 (4) of the Tamil Nadu Value Added Tax Act, 2006, it is mandatory to afford personal hearing to the petitioner. Therefore, the respondent is directed to afford personal hearing after furnishing all the details to the petitioner and thereafter, proceed with the process of passing final assessement orders."*

4.The pointed contention is that the direction given by this Court on the earlier occasion has not been complied with. The notice dated 14.10.2019 merely states that an opportunity of personal hearing is afforded to the petitioner and the petitioner was requested to produce all the recorded evidences to substantiate their claim. Except saying that the petitioner is given an opportunity to file all documentary evidences, the notice dated 14.10.2019 is otherwise wholly silent. It is now the stand of the respondent that this is not a case of mismatch. According to the respondent, JKM Graphics Solutions' case has no application whatsoever. The respondent would claim that the enforcement officials visited the petitioner's business premises in May 2017 and after ascertaining the stock value, called upon the petitioner to give opening stock statement. If that be so, the respondent ought to make it clear in their notice. The respondent without making clear their stand in the notice could not have straight away passed the impugned order. If it is the stand of the respondent that this is not a case of mismatch for invoking JKM Graphics Solution's case, then that should be made clear. The stand of the respondent against the petitioner should be clearly spelt out in the notice to be issued by the respondent. In this view of the matter, the order impugned in the writ petition is quashed and the matter is once again remitted to the file of the respondent to pass orders afresh in accordance with law.

5.The Writ Petition is allowed on these terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer (ST),
Thanjavur-I Assessement Circle,
Sachidananda Moopanar Road, Thanjavur.

+1 CC to M/s.SPL.GP (SR-1732[I] dated 29/01/2020)

ORDER MADE IN
W.P.(MD).No.1523 of 2020

30.07.2020

SPU(06.08.2020) 3P 3C