BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2020

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THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P(MD).Nos.439 to 447 of 2019
and
W.M.P.(MD)Nos.383 to 391 of 2019

M/s.Pharma Fabrikon,
represented by its Partner, A.Gunasekaran,
No.1/332, Otthappatti,
Karuppayurani (PO),
Madurai - 625 020. : Petitioner in all the Writ Petitions

Vs.

The Assistant Commissioner (CT)(FAC),
Tallakulam Assessment Circle,
Madurai - 20. : Respondent in all the Writ Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the respondent in TIN:33324880131/2006-07, 2007-08, 2008-09, 2009-2010, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively, dated 28.11.2018 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner :Mr.A.Chandrasekaran (In all Wps.)

For Respondent :Mrs.J.Padmavathi Devi
Special Government Pleader (In all Wps.)

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COMMON ORDER

Since the issues involved in these Writ Petitions are one and the same, they are disposed of by a common order.

2.Heard Mr.A.Chandrasekaran, learned Counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondent.

3.These Writ Petitions have been filed against the revision of assessment orders passed under Section 27 of the Tamil Nadu Value

Added Tax Act, 2006, against the petitioner, all dated 28.11.2018, for the assessment years from 2006-07 to 2014-15.

4.The prime ground for challenge to the impugned assessment orders made by the petitioner is that the impugned revision of assessment orders have been passed solely on the basis of the Enforcement Wing Officers' report and proposals. According to the petitioner, without verifying the petitioner's books of accounts, the respondent has proposed to revise the petitioner's completed assessment and has also revised the same under the impugned assessment orders.

5.In fact, in all these matters, the petitioner has sent replies, all dated 22.02.2017, to the proposal made by the respondent under Section 27 of the TNVAT Act 2006, to revise the completed assessment of the petitioner. In all those replies, the petitioner has taken a categorical stand that without verifying their books of accounts, the respondent has proposed to revise the assessment based on the web report. According to the petitioner, an independent assessment ought to have been made after verification of the petitioner's books of accounts. But, it is their case that under the impugned assessment orders, the respondent has not followed the due procedure established under law.

6.The learned Counsel for the petitioner has relied upon a judgment of this Court in the case of ***JKM Graphics Solutions Private Limited vs The Commercial Tax Officer, Vepery Assessment Circle***, reported in ***(2017) 99 VST 343 (Mad)***, and would submit that till date, no mechanism has been evolved by the respondent, as to how to take forward cases of mismatch, despite directions given by this Court in the above said decision.

7.A counter affidavit has been filed by the respondent in all these Writ Petitions, wherein, their primary contention is that the petitioner has got alternative statutory appellate remedy available under the TNVAT Act, 2006 and therefore, these Writ Petitions are not maintainable. It is also their case that adequate opportunity was granted to the petitioner in the impugned assessment proceedings and personal hearing was also afforded. According to them, the onus and burden of proof will lie on the dealer under Section 17(2) of TNVAT Act, 2006 and it is their case that even though several details, such as name of seller with their TIN, sales turnover and purchase turnover have been furnished to the dealer(petitioner) at the time of issuing notice, the dealer (petitioner) has failed to prove and reconcile the transactions with available details made between the seller and dealer (petitioner), who is the buyer of goods.

8.The decision relied upon by the learned Counsel for the petitioner in the case of ***JKM Graphics Solutions Private Limited vs***

The Commercial Tax Officer, Vepery Assessment Circle, reported in ***(2017) 99 VST 343 (Mad),*** is squarely applicable to the facts of the instant case. In the said decision, this Court has held that there must be an independent assessment and the respondents should not mechanically accept the web report, based on which, the Enforcement Wing officials of the respondent had submitted their report. In the said decision, this Court had held that there must be an inter-departmental enquiry and only thereafter, the proposal can be made for revising the completed assessment against the dealer. In the case on hand, this Court, after having perused and examined the impugned assessment orders, is of the considered view that no such procedure was followed by the respondent, but instead the respondent has mechanically accepted the findings of the Enforcement Wing Officials, which is based on the web report. There is no independent assessment made by the respondent before passing of the impugned assessment orders under Section 27 of the TNVAT Act 2006, revising the completed assessment against the petitioner. The books of accounts pertaining to the petitioner have also not been verified by the respondent before passing of the impugned assessment orders. Though personal hearing was afforded to the petitioner, the aforementioned procedure ought to have been followed by the respondent before passing of the impugned assessment order, which they have not done so.

9.In all the replies sent by the petitioner to the proposal made by the respondent to revise the completed assessment under Section 27 of TNVAT Act, 2006, they have undertaken to cooperate with the respondent by furnishing all the records/books of accounts, called for by the respondent. In all the replies sent by the petitioner to the respondent, they have also referred to the decision of this Court referred to supra, reported in ***(2017) 99 VST 343 (Mad).*** However, as seen from the impugned assessment orders, the respondent has not adhered to the settled procedure laid down by this Court, while passing the impugned assessment orders under Section 27 of the TNVAT Act, 2006.

10.The counter affidavit filed by the respondent has not answered the grounds raised by the petitioner that the impugned assessment orders have been passed in a mechanical fashion without verification of the petitioner's books of accounts, but, just relying upon the web report maintained by the respondent. While that be so, it is clear that the procedure contemplated as per the decision in ***(2017) 99 VST 343 (Mad)*** has not been adhered to by the respondent, while passing the impugned assessment orders. Therefore, the impugned assessment orders have been passed arbitrarily and in gross violation of principles of natural justice and contrary to the settled procedure of law, as laid down by this Court in ***(2017) 99 VST 343 (Mad).***

11.Accordingly, the impugned assessment orders, all dated, 28.11.2018, are hereby quashed and the matter is remanded back to the respondent for fresh consideration. The respondent shall pass final orders on merits and in accordance with law after affording sufficient opportunity to the petitioner to raise all objections and also granting them the right of personal hearing and in the light of the decision of this Court in ***(2017) 99 VST 343 (Mad),*** within a period of twelve months from the date of receipt of a copy of this order.

12.With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Assistant Commissioner (CT)(FAC),
Tallakulam Assessment Circle,
Madurai - 20.

+1cc to Mr.A.Chandrasekaran, Advocate, SR.No.26759.

W.P(MD).Nos.439 to 447 of 2019
21.12.2020

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