BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.11.2020**

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.16417, 16421, 16423 & 16424 of 2020
and W.M.P.(MD) Nos.13741, 13745, 13746 & 13747 of 2020
(Through Video Conference)

M/s.K.V.Industries,
Rep. by its Proprietor,
K.Subramanian,
No.22-4,Mela Sunnambukara Street.
Alangudi,
Pudukkottai District - 622 301 ... Petitioner in all W.P.'s

Vs

1) The Principal Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005

2) The District Collector,
Pudukkottai District,
Pudukkottai.

3) The Joint Commissioner (CT),
Trichy Division,
Trichirapalli - 620 001

4) The State Tax Officer,
Pudukkottai - II Assessment Circle,
C.T. Buildings, Kattupudukulam,
Pudukkottai 622 001 ... Respondents in all W.P.'s

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the fourth respondent in TIN No.33454122053/2013-2014, 2014-15, 2015-16 and 2016-17 respectively, dated 28.08.2020 and quash the same as illegal, arbitrary and discriminatory.

In all W.P's:

For Petitioner : Mr.K.Soundararajan

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

COMMON ORDER

Since the issue involved in all these writ petitions are one and the same, they are disposed of by this common order.

2. Mrs.J.Padmavathi Devi, learned Special Government Pleader accepts notice for respondents. By consent of both sides, these writ petitions are taken up for final disposal at the stage of admission itself.

3. It is the case of the petitioner that, in the revision of assessment notice, dated 31.12.2019 issued by the fourth respondent, the fourth respondent has proposed to revise the earlier assessment on the ground that the sales effected by the petitioner were on local bodies and not to Government Departments and hence, they are not entitled to any concession in the rate of tax.

4. It is an admitted fact that, for sales effected to Government Departments, any dealer is entitled for concession in the payment of tax at 5%. It is the further case of the petitioner that he has paid the concessional tax, as the sales were effected by them only to Government Departments. However, it is the case of the petitioner that arbitrarily and by total non-application of mind in the impugned assessment order, dated 28.08.2020, the fourth respondent has revised the assessment under section 27(1) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred as 'TNVAT Act') only on the ground that the petitioner has not furnished the certificates in the specified form with regard to the sales effected by them to Government Departments.

5. According to the petitioner, the said assessment order is contrary to the revision notice dated 31.12.2019 issued by the fourth respondent, wherein, the fourth respondent has proposed to revise the assessment on the ground that the sales were effected by the petitioner to local bodies. In such circumstances, this writ petition has been filed.

6. It is also the further contention of the petitioner that no sufficient opportunity was granted to them by the fourth respondent for production of the required certificates with regard to the sales effected by them to the Government Departments. In such circumstances, this writ petition has been filed challenging the impugned assessment order dated 28.08.2020 passed by the fourth respondent under section 27(1) of the TNVAT Act.

7. Heard Mr.K.Soundararajan, learned counsel appearing for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents and also perused the materials placed before this Court.

8. The learned counsel for the petitioner drew the attention of this Court to the revision notice, dated 31.12.2019 issued by the fourth respondent seeking to revise the earlier assessment of the petitioner on the ground that the sales were effected by the petitioner to local bodies and therefore, they are not entitled for any concession in the rate of tax.

9. The learned counsel for the petitioner also drew the attention of this Court to the impugned assessment order, wherein the fourth respondent has revised the assessment under section 27(1) of the TNVAT Act on the ground that the petitioner has not produced the required certificates for having effected sales to Government Departments. As rightly contended by the learned counsel for the petitioner, the impugned assessment order, dated 28.08.2020 is contrary to the revision notice, dated 31.12.2019 issued by the fourth respondent, wherein, the fourth respondent has proposed to revise the assessment on the ground that the petitioner has effected sales to local bodies, which does not entitle them to a concession in the rate of tax at 5%, whereas under the impugned assessment order, the reason for revision of assessment given by the fourth respondent is that the petitioner has not produced the required certificates in the specified format for having effected sales to Government Departments.

10. The reason for change of opinion from the revision notice dated 31.12.2019 is also not disclosed in the impugned assessment order. The learned counsel for the petitioner also submits on instructions that, the petitioner undertakes to produce all the required certificates before the fourth respondent for availing concessional rate of tax at 5%.

11. This Court, after giving due consideration to the revision notice dated 31.12.2019 issued by the fourth respondent and the impugned assessment order dated 28.08.2020 passed by the same fourth respondent, is of the considered view that, no sufficient opportunity has been granted to the petitioner to produce the required certificates, with regard to the sales effected by him to the Government Departments. If the same was intimated to the petitioner in the revision notice dated 31.12.2019 itself, the petitioner may have placed the required certificates before the fourth respondent during the assessment proceedings. However, without any request being made to the petitioner, arbitrarily, the fourth respondent has passed the impugned assessment order, dated 28.08.2020 revising the assessment on the ground that the petitioner has not produced the required certificates for the sales effected to Government Departments, to enable them to avail concessional rate of tax.

12. Further, the learned counsel before this Court on instructions has also submitted that the petitioner is willing to

produce all the necessary certificates before the fourth respondent, if the matter is remanded back to the fourth respondent for fresh consideration.

13. In the light of the above, this Court is of the considered view that the impugned assessment order dated 28.08.2020 passed by the fourth respondent is arbitrary and the principles of natural justice has been violated by the fourth respondent while passing the impugned assessment order.

14. For the foregoing reasons, the impugned assessment order dated 28.08.2020 passed by the fourth respondent is hereby quashed and the matter is remanded back to the fourth respondent for fresh consideration and the fourth respondent shall pass final orders on merits and in accordance with law after providing sufficient opportunity to the petitioner, including granting them the right of personal hearing and giving them sufficient opportunity to produce all the certificates required by the fourth respondent as seen from the impugned assessment order within a period of twelve weeks from the date of receipt of copy of this order.

15. With the aforesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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:

1) The Principal Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005

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   Pudukkottai 622 001

+1 CC to SGP (SR-22548[F] dated 23/11/2020)

Common Order made in
W.P.(MD)No.16417, 16421, 16423 & 16424 of 2020

Dated: **20.11.2020**

VR(CO)
NR (10/12/2020) 5P : 6C