IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition Nos. 74, 75, 2455, 2456, 2618, 2619, 2620, 9585, 9586, 10255, 10319, 10320, 10321, 10322, 10337, 10773, 16396, 16397, 16454, 17382, 18345, 19761, 20079, 20803, 23220 and 24608 of 2012
and
WP Nos. 1714 and 10128 of 2013

1 M/S.V.JANAKIRAMAN TRADERS
REP.BY ITS PROPRIETOR-V.JANAKIRAMAN NO.
46/9A4 NEHRU BAZAR TIMIRI VELLORE
DISTRICT.
... PETITIONER in WP No.74 & 75 of 2012

1 M/S.SRI KAMATCHI STEELS
REP BY ITS PARTNER T. MAHADEVAN NO.54 A
SIDDIVINAYAGAR KOVIL STREET ARCOT VELLORE
DISTRICT
... PETITIONER in WP No.2455, 2456 of 2012

1 M/S.M.B.CONSTRUCTIONS
REP BY ITS PROPRIETOR V. MARGABANDU NO.51-B
ARCOT ROAD OPP COURT BUILDINGS
SATHUVACHERI VELLORE VELLORE DT
... PETITIONER in WP No.2618,2619 and 2620 of 2012

1 M/S.SRI SAKTHI ENGINEERING
WORKS REP BY ITS PROPRIETOR G.K. ANANDAN
NO.3/162 KALINJUR MAIN ROAD KATPADI
VELLORE DISTRICT
... PETITIONER in WP No.9585 of 2012

1 M/S.GOWTHAM TRADERS
REP BY ITS PROPRIETOR V. ARUL PRAKASAM LALA
CHATRAM VEWLAPADI VELLORE 632 001 VELLORE
DISTRICT
.. PETITIONER in WP No.9586 of 2012

1 M/S.MAHADEV TRADINGCO.
REP. BY ITS PROPRIETOR H.JEEVARAM NO.120/14

AZEEZ MANSIONS CHUUABUKARA STREET VELLORE
602 004.
... PETITIONER in WP No.10255 of 2012

1 M/S.SRI GANESH AGENCIES
REP BY ITS PROPRIETOR V. GANESAN NO.143-C
VALLIMALAI KOIL ROAD KOTTANATHAM WALAJA
VELLORE DISTRICT
... PETITIONER in WP No.10319, 10320,
10321 and 10322 of 2012

1 M/S.MALAR ELECTRICALS
REP BY ITS PROPRIETOR A.T. NANDAKUMAR NO.4
PUDUPETTAI ST ARCOT VELLORE DISTRICT
... PETITIONER in WP No.10337 of 2012

1 M/S.QUALITY POWER SYSTEMS .
REP. BY ITS PROPRIETRIX - R.SUBHA NO.14-A
GANDHI MARKET RD. ARNI VELLORE DT
... PETITIONER in WP No.10773 of 2012

1 M/S. GANAPATHY AGENCIES
REP. BY ITS PROPRIETOR - A.GANAPATHY NO.
142/79 JEEVANANTHAM SALAI BALAJI COMPLEX
ARCOT-632503 VELLORE DISTRICT.
... PETITIONER in WP No.16396 of 2012

1 M/S. ANNAMALAIYAR STORES
REP. BY ITS PROPRIETRIX - G.JOTHI NO.142/79
JEEVANANTHAM SALAI BALAJI COMPLEX ARCOT-
632503 VELLORE DISTRICT.
... PETITIONER in WP No.16397 of 2012

1 M/S.BALAMURUGAN STORE
REP BY ITS PARTNER N. MOHAN SAH NO. 1 K.M.
CHETTY STREET VELLORE 632 004
... PETITIONER in WP No.16454 of 2012

1 M/S.J.RAMACHANDRA TRADERS
REP BY ITS PROPRIETOR R.SAKTHIVEL NO.261
JAMATH ROAD NOORULLAHPET VANIYAMBADI 635
751 VELLORE DISTRICT
... PETITIONER in WP No.17382 of 2012

1 M/S.SREE MARUTHI TRADERS
REP. BY ITS PROPRIETOR G.ETHIRAJ NO.1322
SOUTH AVENUE ROAD PHASE II SATHUVACHARI
VELLORE VELORE DISTRICT
... PETITIONER in WP No.18345 of 2012

1 M/S.SHREE LAXMI TRADING
COMPANY REP. BY ITS PROPRIETOR - T.RANGARAM
164 CHUNNAMBUKARA STREET VELLORE 632 004
... PETITIONER in WP No.19761 of 2012

1 M/S.RAJAN SHA GENERAL
MERCHANT REP BY ITS PROPRIETOR R.MANIKANDAN
NO.147 CHUNNAMBUKARA ST VELLORE 632 004
... PETITIONER in WP No.20079 of 2012

1 M/S. THAVANI TRADERS
REP. BY ITS PROPRIETOR M.THAVAMANI NO.174
ARNI ROAD ADUKAMBARAI SATHMADURAI VELLORE.
... PETITIONER in WP No.20803 of 2012

1 M/S.K.N.STORES
REP BY ITS PROPRIETOR V.S.KALIMULLAH NO.
35/1 SITTING MARKET VELLORE AND DT 632 004
... PETITIONER in WP No.23220 & 24608 of 2012

1 M/S.LAKSHMI AUTO STORES
REP. BY ITS PARTNER-N.J.CHANDRAKUMAR NO.
59/2 SATHIYAMOORTHY ROAD ARNI VELLORE
DISTRICT.
... PETITIONER in WP No.1714 of 2013

1 D.MUTHUKUMARASAMY
PROPRIETOR OF S.M.K.TRADERS VANDAVASI ROAD
M.S. NAGAR UKKAMPERUMPAKKAM CHEYYAR TALUK
TIRUVANNAMALAI DISTRICT
... PETITIONER in WP No.10128 of 2013

Versus

The State of Tamil Nadu
represented by the Secretary
Commercial Taxes and Registration Department
Fort St. George, Chennai - 600 009
... 1st Respondent in WP.No.74, 2455, 2618, 9585, 9586, 10255, 10319, 10337,10773, 16396, 16397, 16454, 17382, 18345, 19761, 20079, 20803, 23220, 24608 of 2012 and 1714/13 and 10128 of 2013

The Commercial Tax Officer (Enft.,)
Group-II, Vellore
... 1st Respondent in WP.No.75 of 2012
... 2nd Respondent in WP.No.74,2618 of 2012
... 3rd Respondent in WP.No.17382,

20079, 23220 and 24608 of 2012

The Commercial Tax Officer
Arcot ... 2nd Respondent in WP.No.75/2012, 2456,16396 and 16397 of 2012
... 3rd Respondent in WP.No.74 of 2012 &2455/12

THE ASSISTANT COMMISSIONER
(CT) VELLORE (SOUTH) VELLORE
... 3rd Respondent in WP.No.9586, 10255, 16454 of 2012,
... 2nd Respondent in WP.No. 19761 & 20079 of 2012

THE COMMERCIAL TAX OFFICER
ENFORCEMENT THIRUVANNAMALAI 1.
.. 3rd Respondent in WP.No.10255 & 10773 of 2012

THE COMMERCIAL TAX OFFICER
ARNI ... 2nd Respondent in WP.No.10773 of 2012 and 1714 of 2013

THE COMMERCIAL TAX OFFICER
ENFORCEMENT GROUP-II RANIPET.VELLORE DISTRICT
... Respondent 2 in WP.No.2455/12
... 1st Respondent in WP.No.2456 of 2012
... 2nd Respondent in WP.No.10337 of 2012
and ... 3rd Respondent in WP.No. 16396 of 2012 &16397/2012

THE COMMERCIAL TAX OFFICER
VELLORE (RURAL) VELLORE
...1st Respondent in WP.No.2619, 2620 and 2460 of 2012
... 3rd Respondent in WP.No.2618 of 2012

THE COMMERCIAL TAX OFFICER
ENFORCEMENT GROUP IV VELLORE

...2nd Respondent in WP.No.9585 of 2012

THE ASSISTANT COMMISSIONER
(CT) GUDIYATHAM (EAST) ASSESSMENT CIRCLE
VELLORE ... 3rd Respondent in WP.No.9585 of 2012

THE COMMERCIAL TAX OFFICER
ENFORCEMENT I RANIPET

...2nd Respondent in WP.No.9586 of 2012

THE COMMERCIAL TAX OFFICER
VANDAVASI TIRUVANNAMALAI DISTRICT
...2nd Respondent in WP.No.10128 of 2013

THE COMMERCIAL TAX OFFICER
RANIPET (SIPCOT) RANIPET VELLORE DISTRICT

...1st Respondent in WP.No.10320, 10321 and 10322 of 2012
... 2nd Respondent in WP.No.10319 of 2012

THE ASSISTANT COMMISSIONER
(CT) GUDIYATHAM (EAST) ASSESSMENT CIRCLE
VELLORE
... 3rd Respondent in WP.No.10337 of 2012

THE COMMERCIAL TAX OFFICER
ENFORCEMENT GROUP -II RANIPET
...3rd Respondent in WP.No.16397 of 2012,19761/2012

THE COMMERCIAL TAX OFFICER
ENFORCEMENT GROUP I THIRUVANNAMALAI-1
...2nd Respondent in WP.No.16454 of 2012
...3rd Respondent in WP.No.18345 of 2012

THE ASSISTANT COMMISSIONER
(CT) VANIYAMBADI
... 2nd Respondent in WP.No.17382 of 2012

THE ASSISTANT COMMISSIONER
(CT) VELLORE (RURAL) ASSESSMENT CIRCLE
VELLORE
... 2nd Respondent in WP.No.18345,20803 and 23220 of 2012 & 24608/2012

THE COMMERCIAL TAX OFFICER
ENFORCEMENT GROUP IV VELLORE
...3rd Respondent in WP.No.20803 of 2012

Prayer Writ Petition Nos. 74, 2455, 2618, 9585, 9586, 10255, 10319, 10337, 10773, 16396, 16397, 16454, 17382, 18345, 19761, 20079, 20803, 23220 and 24608 of 2012 and WP Nos. 1714 and 10128 of 2013:

Writ Petition filed under Article 226 of The Constitution of India

Declaring Rule 7(9) as brought out by Amendment to the Tamil Nadu Value Added Tax Rules, 2007 by G.O.Ms.No.62, Commercial Taxes & Registration (B1) dated 06.05.2010 as inconsistent with Section 19 and the general scheme of assessment under Sections 20, 21 and 22 of the Tamil nadu Value Added Tax Act, 2006 and further void as being arbitrary and irrational, infringing the rights of the Petitioners under Articles 14 and 19(1)(g) and the resultant proposal to disallow the claim of Input Tax Credit as Violative of Articles 265 of the Constitution of India

WP No.75 of 2012

Calling for the records of the impugned proceedings of the 2nd Respondent in TIN No.33824580611/2009-10 2010-11 dated 10.08.2011, quash the same as illegal and contrary to the provisions of the TNVAT Act, 2006.

WP No.2456 of 2012

Calling for the records of the impugned proceedings of the 2nd respondent in TIN No. 33434581165/2010-2011 dt 10.8.2011, quash the same as illegal and contrary to the provisions of the TNVAT Act, 2006.

WP No.2619 & 2620 of 2012

Calling for the records on the file of the respondent in his proceedings in TIN No. 33234323934/2009-2010,2010-2011 dt 28.12.2011 quash the same and consequently direct the respondent pass orders in accordance with law after affording reasonable opportunity of being heard to the petitioner.

WP No.10320 of 2012

Calling for the records on the file of the respondent in his proceedings in TIN No. 33344361073/2008-09 dt 7.3.2012 quash the same.

WP No.10321 of 2012

Calling for the records on the file of the respondent in his proceedings in TIN No. 33344361073/2009-10 dt 7.3.2012 quash the same

WP No.10322 of 2012

Calling for the records on the file of the respondent in his proceedings in TIN No. 33344361073/2010-2011 dt 7.3.2012 quash the same.

For Petitioners : Mrs. R. Hemalatha
in all the Writ Petitions

For Respondents : Mr. R.R. Arun Natarajan
Special Government Pleader (Taxes)

assisted by Mr. V. Prashanth Kiran
Government Advocate (Taxes)
in all the Writ Petitions

COMMON ORDER
(Order of the Court was made by R. Mahadevan, J.)

All these writ petitions are filed by the petitioners/assessees praying to issue a Writ of Declaration to declare Rule 7(9) brought out by way of amendment to The Tamil Nadu Value Added Rules, 2007 by G.O. Ms. No.62, Commercial Taxes and Registration (B1) Department, dated 06.05.2010 as inconsistent with Section 19 and the general scheme of assessment provided under Sections 20, 21 and 22 of the Tamil Nadu Value Added Tax, 2006 and further void as being arbitrary and irrational, infringing the rights of the petitioners under Articles 14 and 19 (1) (g) and the resultant proposal to disallow the claim of Input Tax Credit as violative of Article 265 of The Constitution of India.

2.It is the case of the petitioners that they are assessees under the Tamil Nadu Value Added Tax Act and the Rules made thereunder. While so, based on the inspection conducted by the Enforcement Wing Officials, the petitioners filed revised returns rectifying the omissions or errors pointed out and making a claim of input tax credit. However, placing reliance on Rule 7(9) inserted to the Tamil Nadu Value Added Tax by G.O.Ms.No.62, Commercial Taxes and Registration (B1) Department, dated 06.05.2010, the Assessing Officer(s) passed the orders stating that the revised returns having not been filed within a period of six months from the last day of the relevant period, were not accepted and hence, returned. According to the petitioners, the impugned Rule 7(9) seeks to make the filing of revised return mandatory, which is laudable, but makes a drastic differentiation between the dealers whose business place has been subject to inspection or audit vis-a-vis dealers whose place has not been visited by inspection or on audit which is per se a discrimination between the same class of dealers; and Rule 7(9) is wholly unworkable and contrary to the scheme of the Act, since the TNVAT, Act, 2006 encourages self assessment under section 22(1) on the basis of the returns filed by any dealer, but the same is always circumspect to the powers of the assessing officer to verify the trueness and completeness of the monthly returns filed; if the assessing officer is prima facie of the opinion that the returns filed by any dealer is not true or incomplete, he can assess under section 25(1) or 25(2) after due opportunity to the dealer. When a revised return is filed, it will substitute the earlier return filed by the dealer and the contents of the first or original return will cease to have any effect. While so, imposing additional tax or interest or penalty, in the event of filing revised return by voluntarily disclosing certain transaction, is illegal and unconstitutional. By virtue of the amendment brought in, even a genuine or bona fide omission indicated in the revised returns disentitles the assessees to claim Input Tax Credit (ITC) by treating such bona fide omission as a default transaction as contemplated under Section 42 (4) of the Act. Therefore, The petitioners are before this court with the present writ petitions as stated above.

3.However, when the matters were taken up for consideration, the learned counsel for the petitioners, after making some arguments at length, fairly submitted that the main issue involved in these writ petitions relates to assessments made by the assessing officer(s) and it requires an adjudication, both on factual as well as legal aspects, which can be gone into by the Appellate Authority. Therefore, the learned counsel restricted the relief sought in these writ petitions and submitted that it would suffice, if the petitioners are permitted to approach the Appellate Authority by filing appeal(s) under Section 51 of the Act, seeking appropriate relief with regard to the correctness or otherwise of the quantum of tax levied against the petitioners on the basis of the revised returns filed by them.

4.There is no serious objection on the side of the respondents for granting such relief to the petitioners.

5.Having regard to the limited relief now sought by the learned counsel appearing for the petitioners, which has not been seriously opposed on the side of the respondents, we grant liberty to the petitioners to file statutory appeal(s) against the assessments orders passed, if not filed earlier, before the Appellate Authority, for appropriate relief, within a period of six weeks from the date of receipt of a copy of this order. On such filing, the Appellate Authority shall entertain the same without raising any issue as regards the limitation, afford adequate opportunity of hearing to both the parties and pass appropriate orders, on merits and in accordance with law, within a period of six weeks thereafter.

6.Accordingly, all the writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rsh

To

1. THE STATE OF TAMIL NADU
REPRESENTED BY THE SECRETARY
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT
FORT ST. GEORGE, CHENNAI - 600 009

2. THE COMMERCIAL TAX OFFICER (ENFT.,)
GROUP-II, VELLORE

3. THE COMMERCIAL TAX OFFICER
ARCOT

4. THE ASSISTANT COMMISSIONER
(CT) VELLORE (SOUTH) VELLORE

5. THE COMMERCIAL TAX OFFICER
ENGORCEMENT THIRUVANNNAMALAI-1.

6. THE COMMERCIAL TAX OFFICER
ARNI.

7. THE COMMERCIAL TAX OFFICER
ENGORCEMENT II, RANIPET, VELLLORE DISTRICT.

8. THE COMMERCIAL TAX OFFICER
VELLLORE (RURAL) VELLLORE

9. THE COMMERCIAL TAX OFFICER
ENFORCEMENT GROUP IV VELLORE.

10. THE ASSISTANT COMMISSIONER
(CT) GUDIYATHAM (EAST) ASSESSMENT CIRCLE
VELLORE.

11. THE COMMERCIAL TAX OFFICER
ENGORCEMENT I, RANIPET,

12. THE COMMERCIAL TAX OFFICER
VANDAVASI THIRUVANNNAMALAI DISTRICT.

13. THE COMMERCIAL TAX OFFICER
RANIPET (SIPCOT) RANIPET VELLORE DISTRICT.

14. THE ASSISTANT COMMISSIONER
(CT) GUDIYATHAM (EAST) ASSESSMENT CIRCLE
VELLORE.

15. THE COMMERCIAL TAX OFFICER
ENGORCEMENT GROUP I THIRUVANNNAMALAI.

16. THE ASSISTANT COMMISSIONER
(CT) VANIYAMBADI.

17. THE ASSISTANT COMMISSIONER
(CT) VELLORE. (RURAL) ASSESSMENT CIRCLE
VELLORE.

+5cc to Mr.R.Hemalatha, Advocate, S.R.No.63894
+1cc to the special Government Pleader (TAXES), S.R.No. 63732 to 63740, 63745 to 63755 and 63757 and 63758.

WP No. 74 of 2012

RGN(CO)
CT 20/04/2022