IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.12373, 12376, 12378, 12380 & 12381 of 2020
and
W.M.P.Nos.15232, 15235, 15239, 15244 & 15248 of 2020
(Through Video Conferencing)

Tvl.Akshayaa Yarn,
Represented by its Proprietor,
B.Senthil Raja,
Shop No.7, M.S.S.Complex,
Uthukuli Road, Tirupur – 641 601,
Tirupur District. ...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST),
(Central – 1) Circle,
Tirupur. ...Respondent in all W.Ps.

Writ Petitions filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in TIN No.33382402621/2012-13, TIN No.33382402621/2015-16, TIN No.33382402621/2014-15, TIN No.33382402621/2013-14 & TIN No.33382402621/2016-17 respectively, all dated 04.07.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles laid down in the Judgment rendered by this Court in W.A.No.4292 of 2019 on 04.03.2020.

For Petitioner : Mr.R.Senniappan in all W.Ps.

For Respondent : M/s.Amirta Poonkodi Dinakaran
Government Advocate in all W.Ps.

C O M M O N O R D E R

These Writ Petitions have been filed for issuance of Writ of Certiorari, to call for the records relating to the impugned Notices dated 04.07.2020 of the respondent for Assessment Years 2012-2013 to 2016-2017 and to quash the same as being without jurisdiction and authority of law and contrary to principles laid down in the Judgment dated 04.03.2020 passed by the

Division Bench of this Court in W.A.No.4292 of 2019.

2. It is case of the petitioner that the petitioner had earlier filed W.P.Nos.11078, 11373 to 11376 of 2017 challenging the orders of assessment in respect of the Assessment Years 2012-2013 to 2016-2017. This Court, by its order dated 28.04.2017, had set aside these assessment orders and had remitted the case back to the Assessing Officer to re-do the assessment once again after giving an opportunity of hearing to the petitioner and pass appropriate orders on merits, within a period of six weeks from the date of receipt of a copy of the order. The operative portion of the said order reads as under:-

> 3.It is seen that the impugned orders of assessment were passed solely on the reason that the other end dealers from whom, the petitioner effected the purchase have not paid tax. It is further seen that the petitioner, while replying to the notice of proposal, apart from contending that the petitioner cannot be fastened with the liability of the selling dealer, has also sought for personal hearing. The Assessing Officer, without affording the personal hearing, passed the orders of assessment only by stating that the petitioner did not take any effort to prove that the selling dealer has paid the tax. When a personal hearing is sought for by the petitioner, the Assessing Officer, before coming to a conclusion that the petitioner did not prove the payment of tax by the selling dealer, ought to have given an opportunity to the petitioner to appear in person and satisfy as to how such conclusion is either factually wrong or legally not sustainable, as it is specifically contended by the petitioner that they cannot be fastened with such liability. Therefore, I am of the view that the matter has to go back to the Assessing Officer to redo the assessment once again, after giving an opportunity of hearing to the petitioner. Accordingly, the writ petitions are allowed and the impugned orders of assessment are set aside and the matter is remitted back to the Assessing Officer to redo the assessment once again after giving an opportunity of personal hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

3.The learned counsel for the petitioner submits that pursuant to the above order dated 28.04.2017, the respondent issued Notice dated 30.05.2017 fixing the date for personal hearing on 05.06.2017 at 11.30 a.m. and asked the petitioner to appear before the respondent with the following records for verification:-

i. Purchase Bills for all years (2013-14 to 2016-17)
ii. Bank Statement
iii. Income Tax Statement.

4. It is further submitted that the petitioner replied to the said notice enclosing the certain Judgments for reference vide Letter dated 05.06.2017. It is also submitted that after a lapse of almost three years since the issue of Notice dated 30.05.2017, the respondent has issued the impugned Notices. It is submitted that the impugned orders have been passed contrary to the time line set by this Court vide its order dated 28.04.2017 in W.P.Nos.11078, 11373 to 11376 of 2017.

5. The learned counsel for the petitioner further submits that the respondent had also filed W.M.P.Nos.18384 to 18388 of 2020 for extension of time granted in W.P.Nos.11078, 11373 to 11376 of 2017 which were dismissed by this Court vide its order dated 24.08.2021 and therefore it is not open for the respondent to proceed further with the impugned Notices dated 04.07.2020 after a lapse of three years since the order was passed on 28.04.2017 in W.P.Nos.11078, 11373 to 11376 of 2017.

6. The learned Government Advocate, on the other hand, submits that the order came to be passed just before the GST was introduced with effect from 01.07.2017 and that after the GST was implemented, four officers were transferred and four different officers were assumed. It is submitted that as there was re-organization in various places, the orders could not be passed on earlier occasion within the time limit set by the Court.

7. The learned Government Advocate further submits that the time fixed by this Court while passing the order dated 28.04.2017 in W.P.Nos.11078, 11373 to 11376 of 2017 cannot come into the legitimate way of the respondent proceeding with the re-assessment proceedings. She further submits that as a matter of fact, orders also could not have been passed as guidelines pursuant to the order in J.K.M.Graphics Solutions Private Limited, Chennai - 112 and others Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai -6, 2017 SCC OnLine Mad 669 : (2017) 99 VST 343 were being framed by the respondent.

8. It is submitted that the respondent had also framed the

guidelines and had simultaneously approached this Court with a Review Petition No.173 of 2018 in J.K.M.Graphics Solutions Private Limited case referred to supra and that the aforesaid Review Petition was dismissed on 12.02.2021. Pursuant to the dismissal of the aforesaid Review Petition filed by the respondent, the Principal Secretary / Commissioner of Commercial Taxes has issued Circular No.5/2021, dated 24.02.2021 and that guidelines are being followed.

9.The learned Government Advocate further submits that even if the orders were passed earlier pursuant to orders in W.P.Nos.11078, 11373 to 11376 of 2017, the matter would have been challenged and once again remitted back in the light of the order passed by this Court in J.K.M.Graphics Solutions Private Limited case referred to supra. It is submitted that since the Principal Secretary / Commissioner of Commercial Taxes has now issued the aforesaid Circular, the case of the petitioner will be considered based on the said Circular.

10.Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent and perused the orders of this Court in W.P.Nos.11078, 11373 to 11376 of 2017.

11.Though it is submitted that by an order dated 24.08.2021, W.M.P.Nos.18384 to 18388 of 2020 filed for extension of time granted in W.P.Nos.11078, 11373 to 11376 of 2017 have been dismissed, the fact remains that the order came to be passed during the cusp of implementation of GST with effect from 01.07.2017. After the GST was implemented, the offices of the Commercial Tax Department and Central Excise and Service Tax Department were being re-organized. The jurisdictions were being re-drawn.

12.It is noticed that Principal Secretary / Commissioner of Commercial Taxes has now issued the Circular No.5/2021, dated 24.02.2021. Ultimately, the purpose of remanding the case back to the respondent was to pass appropriate orders after ascertaining whether the petitioner was indeed entitled to Input Tax Credit or whether the respondent was justified in demanding the tax. There cannot be any embargo on the respondent from passing orders even though the time specified had lapsed and merely because the respondent either failed to approach the Court order by explaining the delay.

13. Be that as it may, the case of the petitioner has to be considered on merits. If the petitioner had availed input tax credit validly based on the invoice issued by the supplier, question of demanding tax from the petitioner will not arise if other conditions stipulated under the Rules were complied by the

petitioner. Merely because the supplier failed to disclose the turnover in the return would not mean the input tax credit would be required to be recovered from the respondent. There are no merits in these Writ Petitions. However, since the Principal Secretary / Commissioner of Commercial Taxes has now issued the Circular No.5/2021, dated 24.02.2021 to specifically deal with the situation, the case has to be examined in the light of the said Circular.

14.Considering the same, the respondent is directed to pass a speaking order on merits within a period of the four weeks from the date of receipt of a copy of this order. Needless to state that before passing such order, the petitioner shall be heard.

15.These Writ Petitions stand disposed with the above directions. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST),
(Central – 1) Circle,
Tirupur.

+1cc to the Special Government Pleader, S.R.No.67637

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SR(CO)
RGA(19/01/2022)