IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A. NOS. 2404, 2407, 2427 AND 2433 OF 2021
AND
C.M.P. NOS. 15433, 15439, 15380, 15540, 15541, 15572 AND 15574 OF 2021

M/s. Kiran Distributors,
Represented by its Proprietor,
No.63, Perumal Koil Garden II Lane,
Sowcarpet, Chennai – 600 079.

... Appellant is all WAs

Vs.

1. The Assistant Commissioner (CT),
Peddunnaickenpet Assessment Circle,
Rajaji Salai, Chennai – 600 001.

2. The Deputy Commissioner (CT),
Enforcement (North),
PAPJM Building,
Chennai – 600 006.

... Respondents in all WAs

Appeals filed under Clause 15 of Letters Patent, praying to allow the above Writ Appeals by setting aside the common order dated 15.06.2021 passed in W.P.Nos. 18024, 18022, 18025 and 18023 of 2016 on the file of this Court and allow the Writ Petitions.

Prayer in W.P.Nos. 18024, 18022, 18025 and 18023 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari, to call for the impugned proceedings of the 1st respondent in TIN : 33550242192/2013-2014, TIN : 33550242192/2011-2012, TIN : 33550242192/2014-2015, TIN : 33550242192/2012-2013 dated 31.3.2016 and quash the same as the impugned order has been passed totally contrary to provisions of the TNVAT Act against the principles of natural justice and also passed without considering the detailed objections dated 23.12.2015 and 9.3.2016 in W.P.Nos. 18024, 18022, 18025 and 18023 of 2016, respectively.

For Appellant : Mr.P.Rajkumar
(in all WAs)

For Respondents : Mr.M.Venkateswaran
(in all WAs) Government Counsel

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals have been filed by the writ petitioner challenging the common order passed in W.P. Nos. 18024, 18022, 18025 and 18023 of 2016 dated 15.06.2021.

2. Heard Mr. P.Rajkumar, Learned counsel for the appellant and Mr. M.Venkateswaran, Learned Government Counsel appearing for the respondents, and perused the materials placed on record.

3. One of the dealers, who was aggrieved by the said common order had filed writ appeals in W.A. Nos. 2222, 2226, 2229 and 2242 of 2021 and by a common judgment dated 08.09.2021, those appeals were allowed and the matters were remanded to the Assessing Authority for fresh consideration. The operative portion of that common order is extracted as follows:-

> “14. The Writ Petitions were entertained in the year 2014 and an order of interim stay was granted, and the order of interim stay continued to be in force till the disposal of the Writ Petitions vide order dated 15.06.2020.
>
> 15. In the light of the recent decision of the Hon'ble Supreme Court as cited supra, one of the exceptions, which has been drawn, for permitting an aggrieved person to approach this Court and invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, despite availability of an alternate remedy, is when there is violation of principles of natural justice. We need not labour much to investigate and ascertain as to whether the Respondent had received the reply dated 06.12.2013, since the Assessing Officer in the Counter-affidavit filed in the Writ Petitions has accepted that the reply dated 06.12.2013 was received. If such is the case, it goes without saying that the Assessment orders dated 26.02.2014, 26.02.2014, 27.02.2014 and 27.02.2014

passed are in violation of the principles of natural justice. That apart, in the objections given by the Appellant dated 18.11.2013, apart from pointing that the selling-dealer’s registration was very much valid, and that they have been filing e-returns, the Appellant sought for 23 details/documents, which have been listed above, and the Assessing Officer does not dispute the fact that he has received the reply / objections dated 18.11.2013. But without taking note of the request made by the Appellant, the second notice dated 03.12.2013 has been issued once again alleging that the Appellant has purchased from the Registration certificate cancelled dealers and in addition, that the Appellant has not filed any proof for physical movement of goods the assessments were completed.

16. Had the Respondent furnished the details / documents sought for by the Appellant in their reply /objections dated 18.11.2013 or given a reply to the said communication, with regard to the Appellant entitlement to seek any of or all of 23 details and documents, it would have been a different matter?

17. However, the Respondent has virtually ignored the reply dated 18.11.2013, wherein the Appellant, apart from giving its preliminary objections for the revision of assessment, has also sought for certain details and documents. That apart, there has been a specific request made by the Appellant in the representation 18.11.2013 to grant an opportunity of personal hearing. This has also been brushed aside, while issuing the second notice dated 03.12.2013. That apart, in the Assessment orders the Assessing Officer has stated that the Appellant has not furnished any reply to the second notice, whereas it has been admitted in the Counter-affidavit that the reply / objections dated 06.12.2013 has been received.

18. Therefore, we are of the clear view that there have been gross violation of principles of natural justice, which would justify our stand that the Appellant is entitled to invoke the extraordinary jurisdiction of this Court and consequently, Writ Petitions are held to be maintainable.

19. For all the above reasons, we are inclined to interfere the common order passed by the Learned Writ Court and issue certain directions, so that the assessments can be completed, after complying with the principles of natural justice.

20. Accordingly, the Writ Appeals are allowed and the orders passed in the Writ Petitions are set aside and the assessment orders impugned in the writ petitions are quashed and these matters are remitted to the Assessing Officer and the Assessing Officer is directed to issue notice to the Appellant to appear in-person and during their personal appearance, the Appellant is directed to submit a further reply, clearly specifying as to what are all documents and details they would require and on such written request, the Assessing Officer shall consider and provide copies of the available details/ documents, or if the details and documents are very voluminous, the representative of the Appellant would be entitled to peruse the details and documents in the office of the Respondent and after furnishing/ perusal, within 15 days therefrom, a fresh objection shall be given by the Appellant to the proposals made in both the notices dated 06.11.2013 and 03.12.2013 and on receipt of the objections, the respondent shall afford opportunity of personal hearing to the authorised representative of the Appellant and re-do the assessment in accordance with law.

21. On the above terms, these Writ Appeals are allowed. No costs."

4. Learned counsel for the appellant submitted that there is a slight factual distinction between the cases of the dealers, which was the subject matter of the above referred judgment in the writ appeals.

5. In our view, the writ petitions were dismissed solely on the ground of availability of alternative remedy and the factual position has not gone into. We have examined the matters and we found that the writ petitions were maintainable and we have directed the Assessing Authorities to re-do the assessment. Therefore, we make it clear that it is open to the appellant-dealers to raise all contentions before the Assessing Officer.

6. In the light of the above, the writ appeals are allowed and the orders passed in the Writ Petitions are set

aside and the assessment orders impugned in the writ petitions are quashed and these matters are remitted to the Assessing Officer and the Assessing Officer is directed to issue notice to the Appellant to appear in-person and during their personal appearance, the Appellant is directed to submit a further reply, clearly specifying as to what are all documents and details they would require and on such written request, the Assessing Officer shall consider and provide copies of the available details/ documents, or if the details and documents are very voluminous, the representative of the Appellant would be entitled to peruse the details and documents in the office of the Respondent and after furnishing/ perusal, within 15 days therefrom, a fresh objection shall be given by the Appellant and on receipt of the objections, the respondent shall afford opportunity of personal hearing to the authorised representative of the Appellant and re-do the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

Sp/Maya

To

1. The Assistant Commissioner (CT),
   Peddunnaickenpet Assessment Circle,
   Rajaji Salai, Chennai – 600 001.

2. The Deputy Commissioner (CT),
   Enforcement (North),
   PAPJM Building,
   Chennai – 600 006.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.50705

+1cc to the Special Government Pleader(Taxes), High Court, Madras-104, S.R.No.51040

W.A. Nos. 2404, 2407, 2427 and 2433 of 2021

PPA(CO)
RLP(26/10/2021)