IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO.2554 OF 2021
AND
C.M.P.NO.16626 OF 2021

M/s.Nakoda Fashion Wear,
Represented by its Proprietor
No.34, Sundaram Pillai Street,
Purasawalkam,
Chennai – 600 007. .. Appellant

-vs-

The Commercial Tax Officer,
Purasawalkam Assessment Circle,
Anna Nagar, Chennai – 600 102. .. Respondent

Prayer:-
Appeal under Clause 15 of Letters Patent against the order dated 15.06.2021 in W.P.No.6196 of 2017.

W.P.No.6196 of 2017:-
Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of certiorari to call for the records of the respondent his proceedings in TIN.33260483348/2011-12 quash the assessment order dated 02.01.2017 passed therein.

For Appellant : Mr.P.V.Sudakar

For Respondents: Mr.M.Venkateswaran
Government Counsel

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

This appeal by the writ petitioner is directed against the order dated 24.03.2021 in W.P.No.7658 of 2021.

2.The Writ Petition was filed challenging the assessment order passed by the Respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as 'the TNVAT' for short] dated 02.01.2017 for the Assessment Year 2011-12.

3.The writ petitioner, namely, All India Metal and Alloys who had filed four writ petitions which were dismissed by the common impugned order dated 15.06.2021 had filed appeals against the said order in W.A.Nos.2222, 2226, 2229 and 2242 of 2021 and those writ appeals were allowed with certain directions. The operative portion of the order reads 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.Nothing has been placed before us to show that the above decision would not apply to the facts of the present case. Therefore, we are inclined to follow the same.

5.Accordingly, the Writ Appeal is allowed and the order passed in the Writ Petition is set aside and the assessment order impugned in the writ petition is quashed and the matter is 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 25.09.2013 and 11.02.2013 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. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cse

To

The Commercial Tax Officer,
Purasawalkam Assessment Circle,
Anna Nagar, Chennai - 600 102.

+1cc to Mr.P.V.Sudakar, Advocate, S.R.No.53079
+1cc to the Special Government Pleader, S.R.No.53472

W.A.No.2554 of 2021

AD(CO)
CS/08/11/2021