IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.20256 & 20824 of 2021
and
W.P.Nos.21511 & 22094 of 2021

(Through Video Conferencing)

M/s.C.S.N.System,
Rep.by its Proprietor,
S.Venkatakrishnan
No.25, SP Koil Street,
Chidambaram 608 001. ... Petitioner in both W.Ps.

Vs.

The State Tax Officer,
Chidambaram II Circle,
No.100, Venkateshwara Complex,
South Car Street,
Chidambaram. ... Respondent in both W.Ps.

Prayer in both W.Ps.: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in TIN No.33664461680/2009-10 and TIN No.33664461680/2014-15 dated 23.08.2021 on the file of the respondent and quash the same and direct the respondent and to quash the same as illegal, arbitrary and against the Principals of Natural Justice and direct to respondent to furnish the copies of the records of the seller, documents relied upon, jurisdictional report of the Deputy Commissioner of the seller and pass an order after affording an opportunity to cross-examine the vendor of the petitioner.

For Petitioner : Mr.A.Thiyagarajan (in both W.Ps.)
For Mr.S.Ramesh Kumar

For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate
(in both W.Ps.)

COMMON ORDER

This is the third round of litigation by the petitioner.

The petitioner has challenged the impugned orders passed by the respondent dated 23.08.2021 for the Assessment Years 2009-10 and 2014-15 respectively.

2. Earlier, the petitioner had suffered impugned assessment orders dated 30.03.2017 for the Assessment Year 2009-10 and for the Assessment Year 2014-15 vide order dated 15.04.2016.

3. The petitioner had earlier approached this Court in W.P.No.7136 of 2018 for the Assessment Year 2009-10 and for the Assessment year 2014-15 in W.P.No.7137 of 2018. Both the said writ petitions were disposed on the same day by two separate orders dated 27.03.2018. Both order reads as under: -

W.P.No.7136 of 2018:	W.P.No.7137 of 2018:
"5. Having regard to the submissions made by the learned counsel on either side and considering the fact that the Assessing Officer has to re-do the assessment, in view of the above said decision of this Court, this writ petition is allowed and the impugned order dated 30.03.2017 is set side. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment commencing from the stage of issuing notice of proposal, after following guidelines/procedures issued by this Court in the above referred order. The Assessing Officer shall also give personal hearing to the petitioner before finalizing the order of assessment. Whole exercise shall be completed by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.	5. Having regard to the submissions made by the learned counsel on either side, since the mandatory requirement under section 22 (4) of the Tamil Nadu Value Added Tax Act, has not been complied with by the respondent by giving an opportunity of personal hearing to the petitioner, the impugned order is liable to be set side solely on that ground. Accordingly, the impugned order dated 15.04.2016 are set aside and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to decide the matter afresh, after giving due opportunity of personal hearing to the petitioner, on merits and in accordance with law."

4. After the said order came to be passed, the issue relating to input tax credit on account of mismatch in Returns filed by the dealers and information captured by the department in JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, [2017] 99 VST 343 (Mad.) was decided. Ultimately, the orders came to be passed in W.P.No.105 of 2011 dated 01.03.2017 and Review Petition No.173 of 2018 in W.P.No.5007 of 2016 dated 12.02.2021. Several other orders came to be passed following the decision of this Court in JKM Groups. Pursuant to the above, the Principal Secretary/Commissioner of Commercial Taxes has also issued a Circular No.5 of 2021 bearing Reference No.LW10/12521/2016 dated 24.02.2021 before confirming the demands. After the abovesaid circular was issued, the petitioner was served with a pre-assessment notice for the respective assessment orders dated 30.03.2017 and 15.04.2016 to which the petitioner has also sent representations dated 02.08.2021 and 11.08.2021 and asked the respondent to furnish the documents based on which the proposal for denial credit was being made. Meanwhile, the petitioner had also filed W.P.Nos.18107 & 18109/2021 and had questioned the notices preceding the impugned orders which were listed for admission on 17.08.2021. During the pendency of the above writ petitions, the impugned orders both dated 23.08.2021 came to be passed by the respondent.

5. Therefore, the said writ petitions in W.P.Nos.18107 & 18109/2021 were disposed by a common order dated 01.09.2021. Relevant portion of the aforesaid order, reads as under:

> "5. Be that as it may, Ms.Amirta Dinakaran, learned State counsel, who accepts notice on behalf of lone respondent submits, on instructions, that with regard to both the aforementioned assessment years, assessment orders have since been passed. Learned Revenue counsel submits that the assessment orders were made more than a week ago . This draws the curtains on the captioned main writ petitions as writ petitioner has to necessarily challenge assessment orders if so advised and if writ petitioner chooses to do so.
>
> 6. On instructions, learned Senior counsel for writ petitioner submits that copies of assessment orders have not been served on the writ petitioner. In other words, assessment orders have not been served on writ petitioner is learned Senior counsel's say (on instructions).

> 7. Learned Revenue counsel, submits that besides regular service on writ petitioner, copies of the two assessment orders will also be furnished in the course of the day to counsel on record for writ petitioner.
>
> 8. Though obvious, it is made clear that the rights of the writ petitioner to challenge the assessment orders are preserved and all questions in this regard including questions raised in the instant writ petition are left open, if the writ petitioner chooses to challenge the assessment orders.
>
> 9. Captioned writ petitions are disposed of as closed, recording the stated position of the Revenue (as submitted by the learned Revenue counsel). Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs."

6. It is noticed that on the same day, i.e. 01/09/2021 certified copy of the impugned order was also dispatched by the respondent to the petitioner pursuant to which, the petitioner has filed the said writ petitions on 15.09.2021 and the same were listed “for admission.”

7. The learned Senior counsel for the petitioner submits that the respondent has passed the impugned order contrary to the circular dated 24.02.2021 bearing reference No.5/2021 LW10/12521/2016 of the Principal Secretary /Commissioner of Commercial Taxes, Chepauk, Chennai 600 005.

8. It is submitted that the impugned orders have been passed during the pendency of the above writ petitions where the petitioner had challenged the notices issued by the respondent and that the orders have been passed in gross violation of the natural justice. It is submitted that procedure prescribed in the circular also has been given a go-by particularly para Nos.3.3.3 and 3.3.5. of the above said circular, which read as under:-

> “3.3.3. If the Original Assessing Authority is unable to resolve either the whole or part of the mis-match, then the Original Assessing Authority shall issue notice to the dealer concerned indicating the discrepancy with an opportunity to show cause to reconcile the same. After the receipt of reply and after due

enquiry, the Original Assessing Authority finds that the seller has effected the transaction shall make a request to Other End Assessing Authority through email (zimbra mail) marking copy to concerned DC and JC and seek for the requisite details of verification. If on enquiry Original Assessing Authority is of the view buyer has made bogus claim/wrong claim, by being involved in bill trading by producing bogus invoice, etc., the buyer shall be assessed to tax/reversal of ITC, as the case may be, then the Original Assessing Authority shall pass appropriate orders in accordance with provisions of the TNVAT, Act, 2006.

3.3.5. The Assessing Authority should issue show cause notice along with all the details connected to the assessment seeking objections. On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing). The Assessing Officer shall grant adequate opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu, the Assessing Authority can summon the other end dealer and on request, a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days".

9. The learned Senior Counsel submits that the petitioner was also denied the opportunity of cross examine the persons from whom statements were obtained which were relied in the impugned orders and therefore cannot be sustained.

10. Opposing the prayer, the learned Government Advocate for the respondent submits that the petitioner delayed assessment by not permitting the respondent to complete the assessment. It is submitted that the respondent has not violated the procedure in Circular No.5/2021 LW10/12521/2016 of the Principal Secretary /Commissioner of Commercial Taxes in these cases. A reference was made to 3.3.3. It is submitted that the petitioner in any event has an alternate remedy before

the Appellate Authority under Section 51 of the TNVAT Act, 2006 against the impugned order.

11. The learned Government Advocate for the respondent further submits that the petitioner was asked to come to the office of the respondent and collect the document as its evident from the pre-assessment notice dated 29.07.2021 for the Assessment Year 2014-15 and 05.08.2021 for the Assessment Year 2009-10. It is submitted that the petitioner deliberately failed to come and collect the documents and under such circumstances, the impugned orders came to be passed. The learned Government Advocate further submits that the contention of paragraph Nos.3.3.3 and 3.3.5 of the circular is only discretionary and not mandatory.

12. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Government Advocate for the respondent. I have also perused the Assessment Orders dated 30.03.2017 and 15.04.2016 and circular dated 24.02.2021 and the impugned Assessment Order dated 23.08.2021. Though the petitioner failed to come and collect the document after notice was issued to the petitioner on 05.08.2021 for the assessment year 2009-2010 and on 29.07.2021 for the assessment year 2014-15, it was incumbent on the part of the respondent to call upon the petitioner to come for a personal hearing before passing the impugned orders. That apart, the petitioner had already filed W.P.Nos.18107 and 18109 of 2017 before this Court wherein the respective pre-assessment notices issued to the petitioner dated 05.08.2021 and 29.07.2021 were challenged.

13. Since the impugned orders have been passed without calling upon the petitioner to come for a personal hearing and considering the fact that the contents of the circular dated 24.02.2021 has not been fully complied by the respondent before passing the impugned orders, I am inclined to quash the impugned orders and remit these cases back to the respondent to pass a fresh order. The respondent is also directed to send a copy of the relied documents in the impugned assessment orders passed by the respondent and afford an opportunity of personal hearing to the petitioner in terms of circular dated 24.02.2021.

14. In the light of the aforesaid impugned orders stand quashed. The impugned orders which stand quashed shall be treated as corrigendum to the pre-assessment notices dated 05.08.2021 and 29.07.2021 for the respective Assessment Years. The petitioner is directed to file a reply within a period of 30 days from the date of receipt of relied documents. On receipt of such reply, the respondent shall endeavour fresh order within

a period of 30 days thereafter.

15. These writ petitions stand allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

kkd

To

The State Tax Officer,
Chidambaram II Circle,
No.100, Venkateshwara Complex,
South Car Street,
Chidambaram.

+2cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.65886,65887
+1cc to the Special Government Pleader(Taxes), S.R.No.66340,66341

W.P.Nos.20256 & 20824 of 2021

AJS(CO)
SB(28/01/2022)