IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.21121 of 2021

and

W.M.P.No.22389 of 2021

Tvl.Murugan Garments
Represented by its Proprietor
K.Ayyasamy
No.15/3, SNVS Layout 1st Street,
Kongu Main Road
Tirupur-7. ...Petitioner

-Vs.-

The Assistant Commissioner (ST)
Kongunagar Circle
Tirupur. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN:33572441268/2010-2011 dated 27.08.2021 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.Amirta Dinakaran
Government Advocate

O R D E R

Captioned main writ petition has been filed assailing an 'order dated 27.08.2021 bearing reference No.TIN:33572441268/2010-2011' [hereinafter 'impugned order' for the sake of convenience, clarity and brevity] made by the sole respondent.

2. Though the impugned order does not mention the provision of law under which it has been made, this Court is informed that the impugned order has been made under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT' for the sake of brevity, convenience and clarity]. To be noted, Section 27 of TNVAT Act deals with assessment of escaped turnover and wrong availment of 'Input Tax Credit' [ITC]. Proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act make it clear that an order under Sections 27(1) and 27(2) shall not be without giving the dealer a reasonable opportunity to show cause against such an order. In the instant case, a show cause notice [SCN] was issued on 11.03.2019, writ petitioner responded requesting for some time vide communication dated 11.04.2019. Thereafter, another SCN dated 16.12.2020 was issued and writ petitioner responded to the same vide cover letter dated 13.01.2021 annexing bulk of documents which according to learned counsel for writ petitioner is inter-alia monthly returns which explained defects said to have been noticed in SCN. Notwithstanding this reply, another notice dated 23.03.2021 was issued by respondent and writ petitioner responded vide communication dated 03.04.2021 referring to this SCN and detailed response to the same together with annexures.

3. When the above three notices and responses stood, the impugned order came to be passed and a scanned reproduction of the impugned order is as follows:

**PROCEEDINGS OF THE ASSISTANT COMMISSIONER (ST), KONGUNAGAR CIRCLE, TIRUPUR**

**PRESENT : Thiru.K.Sundarrajan, M.Sc., B.Ed., M.A., M.B.A.,**

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**TIN: 33572441268/2010-11** **Dated: 27.08.2021.**

Sub: TNVAT Act-2006 – Tvl.Murugan Garments,Tirupur Assessment year for 2010-11– claim of ITC as per return not agreed with total ITC as per annexure I – notice issued – Order passed - Regarding.

Ref: 1. Monthly Return August and Nov'2010

2. This office notice dated 11.03.2019.

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**ORDER:-**

The AO has scrutinized the monthly returns the following defects were noticed

| Seller TIN | Purchase Value | Rate | ITC Claim |
|---|---|---|---|
| Tvl.Annapoorani Yarns TIN.33972502643 (Seller not mentioned TIN No of the buyers in Annexure-II) | 57,76,525.00 | 4% | Rs.2,31,061.00 |

The dealer reply not accepted and the Reversal of ITC as below.

| | |
|---|---|
| Reversal of ITC | : Rs. 2,31,061.00 |
| Reversal of ITC paid | : Rs. NIL |
| Balance | : Rs. 2,31,061.00 |

A Notice in Form O is issued.

| | |
|---|---|
| Penalty levied u/s 27(4) of the Act @ 50% | : Rs. 1,15,531.00 |
| Reversal of ITC paid | : Rs. NIL |
| Balance | : Rs. 1,15,531.00 |

A Notice in Form RR is issued.

Assistant Commissioner (ST)
*Kongunagar, Circle, Tiruppur*

*Tvl.Murugan Garments*
15,15(1) SNVS Layout 1st Street,
*Kongunagar,Tiruppur – 640652.*

**FORM –O**

**Notice of assessment and demand**

[See Rules 8(4), 8(6), 14(18), 14(21), 14(22)]

TIN : 33572441268

Assessment Year : 2010-2011

To

Tvl.Murugan Garments
15,15(1) SNVS Layout. 1st Street,
Kongunagar,Tiruppur – 640652.

Please take notice that you have been provisionally assessed/finally assessed/reassessed/modified on appeal or revision under the Tamil Nadu Value Added Tax Act, 2006 to a tax/compounded amount of **Rs.2,31,061- (Rupees Two Lakhs Thirty One Thousand and Sixty One only)** for the month/year 2010-2011 and that, after deducting the total amount of the monthly payment(s) already made by you towards the tax/compounded amount for the year, you have to pay a further sum of **Rs.2,31,061-** (Rupees Two Lakhs Thirty One Thousand Six Hundred and One only)

This balance of tax/compounded amount shall be paid within thirty days from the date of service of this Notice in the mode as specified in Rule 2? of the Tamil Nadu Value Added Tax Rules, 2007, failing which the amount will be recovered as if it were an arrear of land revenue or fine imposed by a Magistrate and you shall also be liable to pay the penalty under section 42 of the Act.

| | |
|---|---|
| ITC Reversal due | : **Rs.**2,31,061- |
| Paid | : Rs. NIL |
| Balance | : **Rs.2,31,061** |

Place: Tiruppur
Date: 27.08.2021

Assistant Commissioner (ST),
Kongunagar Circle, Tirupur.

**FORM RR**

**Notice of Penalty**

***(See Rule 16(5), 16-A)***

TIN : 33572441268

Assessment Year : 2010-2011

To

Tvl.Murugan Garments
15,15(1) SNVS Layout. 1st Street,
Kongunagar,Tiruppur – 640652.

Please take notice that a sum **Rs.1,15,531.00 -(Rupees One Lakh Fifteen Thousand Five Hundred and Thirty One only).** Payable by you by way of penalty under sub-section (3) of section 27 of the Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act 32 of 2006) as per the details given below:

This balance of penalty amount shall be paid within thirty days from the date of service of this Notice and the penalty due shall be paid forthwith in the mode as specified in rule 23 of the Tamil Nadu Value Added Tax Rules, 2007, failing which the amount will be recovered as if it were an arrear of land revenue or fine imposed by a Magistrate.

27.08.2021

Place: Tiruppur
Date: 27.08.2021

Assistant Commissioner (ST),
Kongunagar Circle, Tirupur.

4. Adverting to the impugned order, learned counsel submits that the impugned order does not even refer to SCNs much less the detailed response of writ petitioner and more importantly, it has not considered the cause shown by writ petitioner.

5. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of sole respondent. Learned counsel submits on instructions, that going by records, SCNs that preceded the impugned order were in fact issued, but in the considered view of this Court, this does not qualify as an answer to impugned order being completely laconic and not considering the cause shown by writ petitioner.

6. Interestingly and intriguingly, the provision under which the impugned order has been made i.e., Section 27 of TNVAT Act talks about 'Best of its Judgment' for making re-assessment. This is all the more good ground to say that reasons even should be given and in the light of proviso to sub-sections(1) and (2) of Section 27 of TNVAT Act, it is imperative that the cause shown by writ petitioner is considered for re-assessment/revision by adopting Best Judgment Methodology. It follows as a sequitur that the reasons would therefore form the soul of a revision/ re-assessment order and how the objections were considered should be set out and such articulations can be terse or short but it neither be laconic nor bereft of reason (as in this case). To be noted, in the instant case, there is nothing in the impugned order to show that the objections were considered.

7. As already alluded to supra, order can be terse or epigrammatic, but it can be neither laconic nor giving no reason at all. In any event, there should have been some reference in the impugned order, qua cause shown by writ petitioner dealer.

8. Therefore, captioned Writ Petition is disposed of, by making the following order:

(a) The impugned order being order dated 27.08.2021 bearing reference No.TIN:33572441268/2010-2011 is set aside solely on the ground that the cause shown by writ petitioner has not been considered and it does not give any reason whatsoever for not accepting the dealer's position. To be noted, the impugned order also imposes penalty under Section 27(4) of TNVAT Act;

(b) As the impugned order is set aside on the aforementioned short point, though obvious, it is made clear that no view on merits of the matter has been expressed in this order;

(c) The respondent shall de novo do the re-assessment/revision under Section 27 of TNVAT Act, by considering the cause shown by writ petitioner in response to SCNs and make the order afresh as expeditiously as the business of respondent would permit and in any event, within six weeks from today i.e., on or before 12.11.2021;

(d) SCNs have admittedly been issued and as the writ petitioner has responded, further opportunity does not arise in the case on hand.

9. Captioned Writ Petition is disposed of with above directives. Consequently, connected miscellaneous petition is disposed of as closed. There shall be no order as to costs.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

mk

To

The Assistant Commissioner (ST)
Kongunagar Circle
Tirupur.

+1 C.C.to SPECIAL GOVERNMENT PLEADER(TAXES)
SR.NO.51750/2021

W.P.No.21121 of 2021
and
W.M.P.No.22389 of 2021

PM(CO)
RA 20/10/2021