IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.Nos.21318 and 21319 of 2021
and
W.M.P.Nos.22554 and 22556 of 2021

M/s.Vetal Textiles Electronic,
Represented by its Managing Director
Mr.S.Raghuraam Raja,
No.6, Dr.Munusamy Garden Street,
Coimbatore. ...Petitioner in both WPs

-Vs.-

The Assistant Commissioner (ST) (FAC),
P.N.Palayam Circle,
Coimbatore. ...Respondent in both WPs

Writ Petition Nos.21318 of 2021 and 21319 of 2021, filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in TIN:33272161103/2013-14 and TIN:33272161103/2014-15 respectively and quash the orders dated 15.07.2021 passed therein.

For Petitioner in both WPs : Mr.B.Raveendran

For Respondent in both WPs : Ms.Amirta Dinakaran,
Government Advocate

COMMON ORDER

Captioned writ petitions and 'writ miscellaneous petitions' ['WMPs'] therein are in the Admission Board.

2. Mr.B.Raveendran, learned counsel for writ petitioner in both the writ petitions and the petitioner in WMPs therein is before this Virtual Court. With the consent of learned counsel on both sides, the captioned writ petitions are taken up.

3. Learned counsel submits that 'two orders both dated 15.07.2021 bearing reference Nos.TIN:33272161103/2013-2014 and

TIN:33272161103/2014-2015' [collectively 'impugned orders' for the sake of convenience and clarity] pertaining to assessment years 2013-2014 and 2014-2015 qua writ petitioner have been assailed in the captioned writ petitions. This is yet another case, in which provision under which the impugned orders have been made, has not been mentioned in the impugned orders. This is further made complex by No.1 to Note thereat, which reads as follows:

> 'Note: (1) This order is subject to revision under Section 27 of TNVAT Act 2006 read with Section 9 (2) of CST Act, 1956.'

4. The reason is, impugned orders are clearly under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT' for the sake of convenience and clarity]. Therefore, Note (1) is clearly out of context.

5. Be that as it may, learned counsel for writ petitioner draws the attention of this Court to proviso of Section 19(2)(v) of TNVAT Act and submits that it does not apply when goods purchased from registered dealers are used in the manufacturing of goods within the State and such manufactured goods are sold in the course of inter-State trade or commerce. Learned counsel submits that the impugned orders proceeded by giving expansive and stretched interpretation of this proviso. However, learned counsel submits that a Hon'ble Division Bench is in seizin of a matter (W.A.No.1260 of 2017) wherein the issue of locally tax suffered goods is being examined.

6. Learned counsel also draws the attention of this Court to page Nos.22 & 23 of the typed set of papers as downloaded from the official website of this Court that has been placed before me to demonstrate that a Hon'ble Division Bench is in seizin of aforementioned matter and it is pending. A scanned reproduction of Page Nos.22 & 23 of typed set is as follows:

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CNR Number

Case Status

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Cause List

Caveat Search

Case Status

Madras High Court | Madras High Court

Party Name | Case Number | Filing Number | Advocate Name | FIR Number | Act | Case Type

Case Details

Filing Number	WA 03[illegible]/2017	Filing Date	10-04-2017
Registration Number	WA 1[illegible]/2017	Registration Date	0[illegible]-0[illegible]-2017
CNR Number	HCMA01-1[illegible]-2017		

Case Status

First Hearing Date	10th October 2017
Next Hearing Date	23rd March 2021
Stage of Case	[illegible]
Coram	[illegible]-Honourable Mr Justice T. S. SIVAGNANAM , Honourable Ms Justice R.N.MANJULA
Bench Type	Division Bench
Judicial Branch	JURISDICTION
State	TAMIL NADU
District	Chennai

Petitioner and Advocate

1) THE STATE OF TAMIL NADU
Advocate- [illegible]
2) THE DEPUTY COMMISSIONER (CT)

Respondent and Advocate

1) M/S [illegible] LTD
Advocate- [illegible]
[illegible]

Category Details

Category	[illegible]

Subordinate Court Information

Court Number and Name: HIGH COURT, MADRAS
Case Number and Year: WP - [illegible] - 2017
Case Decision Date: [illegible]

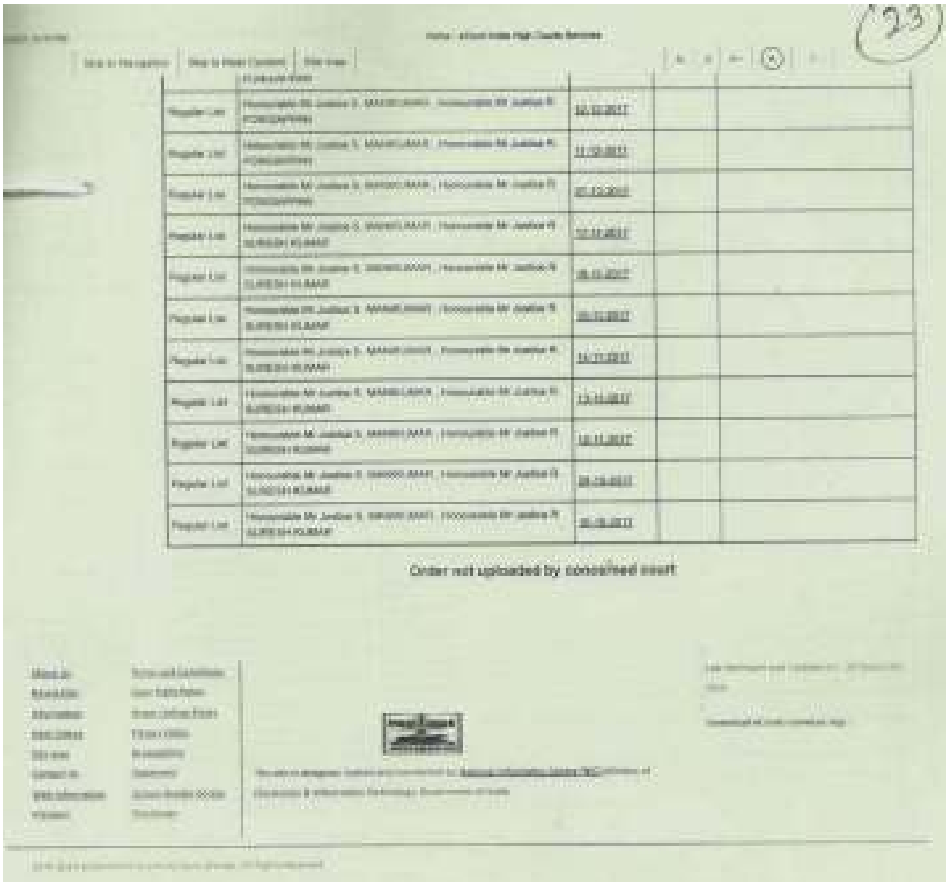
Linked Cases

Filing Number(s)	Case Number
WA/[illegible]/2017 (main)	WA/[illegible]/2017 (main)
WA/[illegible]/2017	WA/[illegible]/2017
WA/[illegible]/2017	WA/[illegible]/2017
CMP/[illegible]/2017	CMP/[illegible]/2017

History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
Register List	Honourable Mr Justice T. S. SIVAGNANAM , Honourable Ms Justice R.N.MANJULA	10-02-2021	23-03-2021	[illegible]
Register List	Honourable Mr Justice [illegible] , Honourable Mr Justice [illegible]	[illegible]-2017		
Register List	Honourable Mr Justice [illegible] , Honourable Mr Justice [illegible]	[illegible]-2017		

https://hcservices.ecourts.gov.in/hcservices/



7. Learned counsel for writ petitioner submits that respondent should wait for disposal of aforementioned writ appeal, but whether the facts of this case would require the respondent to await disposal of aforementioned matter by Hon'ble Division Bench will come to light only when the writ petitioner gives its explanation / shows cause. There will be a mention about this infra in the operative portion of this order. There will be discussion about writ petitioner not being given opportunity of showing cause infra. Therefore, this question is left open.

8. Be that as it may, learned counsel pointed out that no notice has been issued prior to the impugned orders.

9. Ms.Amirta Dinakaran, learned Revenue counsel, accepts notice on behalf of lone respondent in both the captioned writ petitions. Learned counsel submitted that records of the respondent does not demonstrate that any notice was issued to the writ petitioner prior to impugned orders being made. This takes us to the common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act. Common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act reads as follows:

'27. Assessment of escaped turnover and wrong availment of input tax credit.-

(1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of five years from the date of assessment order by the assessing authority, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of assessment, reassess the tax due after making such enquiry as it may consider necessary.

(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of five years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

(underlining made by this Court to supply emphasis and highlight)

10. In an elaborate judgment in State Bank of India officers case law, [State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commisioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019], an expression 'giving the dealer a reasonable opportunity to show cause was explained. This matter was carried in appeal by way of intra-Court appeal vide W.A.No.4073 of 2019 and a Hon'ble Division Bench of this Court dismissed the writ appeal in and by order dated 16.12.2019 sustaining the order made by me in the this case.

11. I am informed that neither of aforementioned orders have been reported in any law journal. Therefore, I deem it

appropriate to give dates and numbers of the orders made by me and by Hon'ble Division Bench.

12. Therefore, there is a clear breach of common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act, which is an infraction leading to infarction qua Section 27 of TNVAT Act proceedings i.e., impugned orders.

13. On the aforementioned short point, the impugned orders stand infarcted, owing to infraction of proviso and therefore, I pass the following order:

(a) Impugned orders dated 15.07.2021, bearing reference TIN:33272161103/2013-2014 and TIN:33272161103/2014-2015 are set aside solely on the ground that common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act have been breached;

(b) Owing to the short point on which impugned orders are being set aside, though obvious, it is made clear that this Court has not expressed any view on the merits of the matter;

(c) The respondent will do well to commence reassessment/revision proceedings under Section 27 of TNVAT Act, right earnest and conclude the same as expeditiously as the official business of respondent would permit and in any event, within twelve weeks from today i.e., on or before 27.12.2021;

(d) Though obvious, the respondent shall adhere to all the requirements in law for making an order/revision/reassessment under Section 27 of TNVAT Act while doing de-novo exercise;

(e) Depending on the cause shown by the writ petitioner if the respondent chooses to await disposal of aforementioned W.A.No.1260 of 2017 by Hon'ble Division Bench, the aforementioned time line will not apply;

14. Captioned Writ Petitions are disposed of as closed. Consequently, WMPs therein are also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mk/nsa

To

The Assistant Commissioner (ST) (FAC),
P.N.Palayam Circle,
Coimbatore.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.51784
+1cc to the Special Government Pleader(Taxes), S.R.No.51874

W.P.Nos.21318 and 21319 of 2021
and
W.M.P.Nos.22554 and 22556 of 2021

PMK[co]
NSK 02/11/2021