IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.21196, 21201 & 21204 of 2021
and
W.M.P.Nos.22476, 22480 & 22482 of 2021

(Through Video Conferencing)

M/o.Gold Mine Hotels,
Represented by Partner,
Mr.Mu.Arun Sandron,
No.19, Jawaharlal Nehru Road,
Koyambedu,
Chennai – 600 107. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT) (FAC)
Vadapalani Assessment Circle,
No.1, PAPJM Annex Building,
Ground Floor, Greams Road,
Chennai – 600 006. ... Respondent in all W.Ps.

Writ Petitions filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in Proc.No.TIN/33751462633/2007-2008, Proc.No.TIN/33751462633/2008-2009 & Proc.No.TIN/33751462633/2009-2010 respectively and quash the respective orders dated 02.09.2021, 03.09.2021 & 02.09.2021 as passed in violation of principles of natural justice and further direct the respondent to pass a fresh assessment order after granting reasonable opportunity to the petitioner.

For Petitioner : Mr.P.Rajkumar, in all W.Ps.

For Respondent : Mr.D.Ravichander,
Spl. Govt. Pleader, in all W.Ps.

COMMON ORDER

The petitioner in these Writ Petitions has challenged the three impugned Assessment Orders dated 02.09.2021, 03.09.2021 & 02.09.2021 passed by the respondent in

Proc.No.TIN/33751462633/2007-2008, Proc.No.TIN/33751462633/2008-2009 & Proc.No.TIN/33751462633/2009-2010 respectively. These impugned Assessment Orders have been challenged primarily on the ground that the impugned Assessment Orders have been passed without following principles of natural justice.

2. It is case of the petitioner that the petitioner was earlier issued with pre-assessment notices dated 10.02.2010, wherein, it was proposed to disallow the input tax credit under Section 19(11) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006) as the petitioner had claimed the input tax credit belatedly. The petitioner was requested to furnish certain documents which the petitioner allegedly failed to produce. These notices were challenged before this Court in W.P.Nos.22332 to 22335 of 2010. These Writ Petitions were ultimately dismissed vide order dated 17.07.2013 along with batch of Writ Petitions in USA Agencies Vs. The Commercial Tax Officer, which was reported in 2013 (5) CTC 63 : 2014 (305) ELT 404 (Mad.), wherein, this Court held that Section 19(11) of the TNVAT Act, 2006 was a valid piece of legislation and not violative of Articles 265 and 360A of the Constitution of India. It was dismissed with the following observations:

> 85. In cases where final orders of assessment have been challenged, the assessees shall be entitled to prefer statutory appeal against such order and if such appeals are presented, within a period of 60 days from the date of receipt of a copy of this order, the same shall be entertained by the appellate authority subject to the assessee full-filing other mandatory statutory conditions except rejecting those appeals on the ground of limitation. In cases where the petitioners have challenged show cause notices, they are at liberty to submit their explanation. If such explanation is submitted within a period of 30 days from the date of receipt of a copy of this order, the assessing authority shall consider the case in accordance with law.
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> 86. In the result, all the writ petitions are dismissed holding that Section 19(11) is a valid piece of legislation, cannot be struck down as being either unreasonable or discriminatory and violative of Article 265 and 360A of the Constitution of India. The interim

stay granted in all writ petitions stand vacated and the miscellaneous petitions are closed. There is no order as to costs.

3. Under these circumstances, the petitioner filed its common objections to the above Notices dated 10.02.2010 on 29.08.2013. After the the objections were filed by the petitioner to the aforesaid notices, the respondent issued Notices dated 14.07.2014 for these three Assessment Years, whereby, apart from the proposal to disallow the Input Tax Credit, a proposal was to impose a penalty.

4. The petitioner replied to the aforesaid Notices dated 14.07.2014 by separate replies dated 18.08.2014. The petitioner was thereafter called upon for a personal hearing on 19.07.2017 by the respondent vide Notices dated 12.07.2017. The petitioner vide separate letters dated 18.07.2017 requested further time to submit all documents. Vide separate letters dated 04.10.2017, the petitioner also requested to drop the proposal to levy penal interest and to drop the further action as per the proposals contained in the notices for the Assessment Years 2007-2008, 2008-2009 and 2009-2010. Eventually, the impugned Assessment Orders dated 02.09.2021, 03.09.2021 & 02.09.2021 have been passed by the respondent.

5. The learned counsel for the petitioner submits that long after the replies, objections, additional written submission and letters for dropping the actions were filed, the impugned Assessment Orders have been passed by the different officer in the year 2021. The learned counsel for the petitioner submits that the officer who had heard the petitioner earlier has not passed the impugned Assessment Orders and that long after the personal hearing was held, the impugned Assessment Orders have been passed and therefore are liable to be quashed and this Writ Petitions are liable to be allowed.

6. Defending the impugned Assessment Orders, the learned Special Government Pleader appearing for the respondent submits that the petitioner has an alternate remedy and therefore, these Writ Petitions are liable to be dismissed. The learned Government Pleader appearing for the respondent further submits that even on merits, the petitioner is not entitled to input tax credit as the petitioner had failed to claim input tax credit in time and therefore, even on that ground, there is no case made out by the petitioner for interference. The learned Government Pleader further submits that by setting aside the impugned Assessment Orders and remitting case back to the Authority, no

useful purpose will be served and therefore, submits that there is no merit in the present Writ Petitions and prays for dismissal of these Writ Petitions.

7. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondent and perused the impugned Assessment Orders, Notices of the respondents and Reply / Objections filed by the petitioner and the orders of this Court.

8. Earlier Notices were issued on 10.02.2010 and fresh Notices were also issued on 14.07.2014. After the petitioner was issued with fresh Notices, the petitioner also replied to the same and field additional written submission. The fact remains that a personal hearing was held by an officer earlier. The impugned Assessment Orders have been passed by another officer long after the aforesaid personal hearing by another officer. Since it is not possible to go into disputed questions of facts in these Writ Petitions as to the correctness or otherwise the claim of the petitioner, the impugned Assessment Orders are liable to be passed.

9. In view of overall facts and circumstances of the case and since the impugned Assessment Orders have been passed without following principles of natural justice, the impugned Assessment Orders dated 02.09.2021, 03.09.2021 & 02.09.2021 are quashed and the cases are remitted back to the respondent to pass fresh orders.

10. The petitioner is given liberty to file additional representations, written submissions, if any, within a period of thirty (30) days from the date of receipt of a copy of this order.

11. The respondent shall thereafter call upon the petitioner for a personal hearing and pass fresh orders within a period of sixty (60) days from the date of receipt of a copy of this order.

12. This Writ Petitions are therefore disposed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT) (FAC)
Vadapalani Assessment Circle,
No.1, PAPJM Annex Building,
Ground Floor, Greams Road,
Chennai - 600 006.

+1cc to Mr.P.Rajkumar, Advocate SR.No.58823

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and
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JPL(CO)
GN(17/12/2021)