IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.Nos.21588 & 21591 of 2021
and
W.M.P.Nos.22788 & 22791 of 2021

Tvl.South India Engineering Corporation
Represented by its Partner
Babulal Ranka
No.103, Broadway Main Road,
Broadway, Chennai-600 001. ... Petitioner in both WPs

-Vs.-

The Assistant Commissioner (ST)
Broadway Assessment Circle
No.32, Room No.304, Integrated Commercial
Taxes Complex, Elephant Gate Bridge Road,
Veperay, Chennai-600 003. ... Respondent in both WPs

Writ Petition Nos.21588 & 21591 of 2021 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the respondent in TIN:33210040813/2014-15 dated 31.08.2021 and TIN:33210040813/2013-14 dated 23.10.2020 and quash the same.

For Petitioner in both WPs : Mr.R.Senniappan

For Respondents in both WPs: Ms.Amirta Dinakaran
Government Advocate

C O M M O N O R D E R

This common order will govern the captioned writ petitions and 'writ miscellaneous petitions' [hereinafter 'WMPs' in plural and 'WMP' in singular for the sake brevity of convenience and clarity] therein.

2. Mr.R.Senniappan, learned counsel on record for writ petitioner in both captioned writ petitions and Ms.Amirta Dinakaran, learned Revenue counsel who accepts notice on behalf of lone respondent in both captioned writ petitions are before

this Court, with the consent of learned counsel on both sides, the captioned writ petitions are taken up as the entire matter turns on a very narrow compass and acute legal angle.

3. Notwithstanding very many averments made and grounds raised in the writ affidavit, learned counsel for writ petitioner, submits that owing to the captioned matter being in writ jurisdiction, he would make pointed submissions and projected the following two points:

(a) Impugned orders which have 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 convenience and clarity] have been made on the basis that writ petitioner has not sent objections whereas, writ petitioner has sent their reply which have been placed before this Court as part of case file. Learned counsel also points out that the replies have the acknowledgment of respondent;

(b) Impugned orders have been made more than 3 years from the date of original notice. In any event, it has been made more than 1½ years post last of the objections;

4. Learned Revenue counsel submits that in any proceedings under Section 27 of TNVAT Act, the respondent would certainly look into the entire file before making the assessment order. However, in the instant case, the impugned orders read as follows:

PROCEEDING OF THE ASSISTANT COMMISSIONER(ST)
BROADWAY ASSESSMENT CIRCLE
PREST: Thiru.T.Thirumalai Rajchander B.Tch.,
Station: No32, Room No 304, Integrated Commercial Taxes Complex
Elephant, Gate Bridge Road, Vepery, Chennai -600 003.

TIN: 33210040813/2013-14 Dated: 23.10.2020.
I.A.36

Sub : TNVAT Act 2006- Broadway Assessment circle –Tvl. South India Engineering Corporation - 2013-14 - Reversal of ITC u/s 19(5)(C)/ 19(2)(v) – Notice issued – Objections not filed order passed - Regarding.

Ref : 1) Monthly returns in Form -I filed by the dealer for the year 2013-2014 under the TNVAT Act.
2) This office notice TIN/33210040813/2013-2014, Dated: 03.01.2020.

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Note:- An appeal against this order lies before the Appellate Deputy Commissioner (CT), Chennai (North) within 30 days of receipt of this order.

ORDER:-

Tvl. South India Engineering Corporation, doing business at No.103, Broadway Main Road, Broadway, Chennai – 600 001, is a registered dealer in the Office of the Assistant Commissioner (ST), Broadway Assessment Circle.

Without Form C 19(5)(c)

No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956.(Central Act 74 of 1956).

(A) Reversal under Section 19(5)(C) on the Interstate sales without "C" Forms:-

ITC reversal under section 19(5)(C) = $\frac{\text{ITC X Interstate sales without "C" form}}{\text{Total Sales (VAT + CST)}}$

PROCEEDING OF THE ASSISTANT COMMISSIONER(ST)
BROADWAY ASSESSMENT CIRCLE
PREST: Thiru.T.Thirumalai Rajchander B.Tech.,
Station: No32, Room No 304, Integrated Commercial Taxes Complex
Elephant, Gate Bridge Road, Vepery, Chennai -600 003.

TIN: 33210040813/2014-15 Dated: 31.08.2021

I.A. 68

Sub : TNVAT Act 2006- Broadway Assessment circle –Tvl. South India Engg. Corporation, - 2014-15 - Reversal of ITC u/s 19(5)(C)/ 19(2)(v) – Notice issued – Objections not filed order passed - Regarding.

Ref : 1) Monthly returns in Form –I filed by the dealer for the year 2014-2015 under the TNVAT Act.

2) This office notice TIN/33210040813/2014-2015, Dated: 06.01.2020.

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Note:- An appeal against this order lies before the Appellate Deputy Commissioner (CT), Chennai (North) within 30 days of receipt of this order.

ORDER:-

Tvl. South India Engg. Corporation, doing business at No.103, Broadway, Chennai - 600 001, is a registered dealer in the Office of the Assistant Commissioner (ST), Broadway Assessment Circle.

Without Form C 19(5)(c)

No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956.(Central Act 74 of 1956).

(A) Reversal under Section 19(5)(C) on the Interstate sales without "C" Forms:

ITC reversal under section 19(5)(C) = ITC X Interstate sales without "C" form / Total Sales (VAT + CST)

Broadway, Chennai – 600 001.

ITC reversal under Section 19(5)(C) = 7435464 X 5280578 = Rs. 1,85,364/-

FORM – O
(See rules 8(4), 8(6), 14(21), 14(22))
Notice of Assessment and Demand

TIN	3	3	2	1	0	0	4	0	8	1	3

Assessment year 2014-2015

To
Tvl. South India Engg. Corporation,
No.103, Broadway,
Chennai - 600 001.

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. 4,83,057.00 (Rupees Four Lakhs Eighty Three Thousand Fifty Seven only) for the month/year 2014-15 and that, after deducting the total amount of the monthly payments already made by you towards the tax/compounded amount for the year, you have to pay a further sum of Rs. 4,74,563.00 (Rupees Four Lakhs Seventy Four Thousand Five Hundred Sixty Three 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 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 and you shall also be liable to pay the interest under section 42 of the Act.

Amount due	:	Rs 4,83,057.00
Amount Paid	:	Rs 8,494.00
Balance	:	Rs. 4,74,563.00

31/08/2021

Place : CHENNAI
Date : 31.08.2021.

Signature :
Assessing Authority :
Name :
Designation :

5. The above portions of the impugned orders make it clear that the impugned orders have been made on the basis that writ petitioner/dealer has not filed objections. Law is well settled that a impugned order cannot be improved by filing a counter affidavit. If the respondent has looked into the objections of

the writ petitioner/dealer before making impugned orders, the same should have been dealt with atleast very tersely in the impugned orders.

6. This Court is of the considered view that it is within the domain of respondent and it can even be epigrammatic as long as it is not laconic. On facts, factual matrix qua both the captioned writ petitions is the same, the difference is only with regard to assessment years, while one writ petition pertains to assessment year 2013-2014, the other writ petition pertains to assessment year 2014-2015.

7. This Court 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] has explained the expression 'giving the dealer a reasonable opportunity to show cause' occurring in the common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act. This order was carried in appeal by way of a writ appeal i.e., intra Court appeal vide W.A.No.4073 of 2019 and the same was dismissed by a Hon'ble Division Bench on 16.12.2019. This Court is informed that the orders of this Court as well as that of Hon'ble Division Bench have not been reported in any Law journal. Therefore, I make it a point to give the dates of orders and case number for the convenience of all concerned.

8. As notice has been issued by writ petitioner/dealer and writ petitioner/dealer has also sent objections, in the instant case on hand, in the light of the principle laid down in State Bank of India officers case law, it will suffice if the objections are considered as that would satisfy the expression 'non-giving the dealer a reasonable opportunity to show cause...' being given to the dealer.

9. In the light of the narrative, discussion and dispositive reasoning set out thus far, the following order is passed:

(a) Impugned orders being orders dated 23.10.2020 bearing reference No.TIN:33210040813/2013-14 and dated 31.08.2021 bearing reference No.TIN:33210040813/2014-15 are set aside solely on the ground that it proceeds on the basis that writ petitioner/dealer has not filed objections, whereas objections in fact have been filed and the same have been duly acknowledged by respondent;

(b) As a sequitur to the above limb, though obvious, it is made clear that this Court has not expressed any view or opinion on merits of the matter;

(c) The respondent shall now de novo do revision/reassessment under Section 27 of TNVAT Act by considering the objections of writ petitioner/dealer and make an order as expeditiously as possible i.e., as expeditiously as the official business of respondent would permit and in any event, within three weeks from today i.e., on or before 27.10.2021;

(d) De novo order i.e., revision/reassessment order made in the aforesaid manner shall be duly communicated to writ petitioner under due acknowledgement within five working days from the date of the order;

(e) As time line has been fixed after setting aside impugned orders, second point urged by learned counsel for writ petitioner/dealer regarding the time taken for making impugned orders (for the present in this order) pales into insignificance;

10. The above draws the curtains on the captioned writ petitions. Captioned Writ Petitions are disposed of with the above directives. Consequently, connected WMPs are disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST)
Broadway Assessment Circle
No.32, Room No.304, Integrated Commercial
Taxes Complex, Elephant Gate Bridge Road,
Veperay, Chennai-600 003.

+1cc to the Government Pleader Sr.52880
+1cc to Mr.R.Senniappan, Advocate Sr.52585

W.P.Nos.21588 & 21591 of 2021
and
W.M.P.Nos.22788 & 22791 of 2021

ssd[co]
srg 09/11/2021