IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NOS.23507, 23510, 23516, 23517 AND 23522 OF 2021

W.P.No.23507 of 2021

CRI Pumps Pvt. Ltd.,
Represented by its
Chief Financial Officer
K.Srinivasa Raghavan
7/46-1, Keeranatham Road
Saravanampatti
Coimbatore

... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC)
Annur Circle
Coimbatore

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent herein in TIN 33162201952/2013-14 for the month of May dated 13.09.2021 for the month of June dated 13.09.2021; for the month of July dated 13.09.2021; for the month of August dated 13.09.2021; for the month of September dated 13.09.2021; and to quash the same and to direct the respondent herein to refund the amount of Rs.20,48,754/-, Rs.22,31,227/-, Rs.15,82,964/-, Rs.13,14,975/-, Rs.17,98,117/- respectively for the month of May 2013, June 2013, July 2013, August 2013, September 2013.

For Petitioner : Mr.N.Inbarajan

For Respondent : Ms.Amrita Dinakaran
Government Advocate

COMMON ORDER

This common order will govern the captioned five main writ petitions.

2. In the captioned writ petitions, five different orders, all dated 13.09.2021 made by the respondent have been assailed. To be noted, all the five orders disallow refund claimed by the writ petitioner/dealer, the details of the impugned orders and writ petitions are as follows:

SI.No.	Date of the Impugned order	Reference of the Impugned order	Month for which refund has been claimed	Writ Petition
1	13.09.2021	TIN33162201952/2013-14	May 2013	W.P.No.23507 of 2021
2	13.09.2021	TIN33162201952/2013-14	June 2013	W.P.No.23510 of 2021
3	13.09.2021	TIN33162201952/2013-14	July 2013	W.P.No.23516 of 2021
4	13.09.2021	TIN33162201952/2013-14	August 2013	W.P.No.23517 of 2021
5	13.09.2021	TIN33162201952/2013-14	September 2013	W.P.No.23522 of 2021

3. The impugned orders are adverbatim the same, the difference being only the months i.e., various months in the Assessment year 2013-14 for which refund has been claimed. The point on which challenge to the impugned orders is predicated is also common.

4. Mr.N.Inbarajan, learned counsel for writ petitioner / dealer adverting to the impugned orders submits that the impugned orders were preceded by a notice from the respondent being notice dated 03.09.2021 calling upon the writ petitioner to produce certain documents within seven days. These notices were served on the writ petitioner on 04.09.2021, writ petitioner went before the respondent and sought for time as the same pertains to eight year old records, but without granting

time, impugned orders have been made. It was also pointed out that in the notice dated 03.09.2021, it has been made clear that an opportunity of personal hearing would be granted, but the same was not granted.

5. Ms.Amirta Dinakaran, learned Revenue counsel accepted notice on behalf of lone respondent. On instructions, learned Revenue counsel made submissions, a summation of which is as follows:

> a) It is not imperative to grant personal hearing for refund applicant under Section 18(3) of 'the Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity] read with Rule 11(2) of 'Tamil Nadu Value Added Tax Rules, 2007' [hereinafter 'TNVAT Rules' for the sake of brevity];
>
> b) In a refund application, going by the language in which Rule 11(2) of TNVAT Rules is couched, the dealer / writ petitioner should file the refund application along with copies of invoices and bills related to purchases;
>
> c) In the instant case, writ petitioner did not respond to 03.09.2021 notices and produce the records;
>
> d) a personal hearing was, in fact, granted.

6. This Court, with the consent of learned counsel on both sides, took up the main writ petition as the matter turns on a very narrow compass.

7. A careful perusal of the impugned orders reveals that it does not mention that personal hearing was granted. To be noted, 03.09.2021 notices were served on the writ petitioner / dealer on 04.09.2021, excluding 04.09.2021, 7 days elapsed on 11.09.2021 and the impugned orders have been made one working day later on 13.09.2021. Therefore, the likelihood of personal hearing if at all could have been only on 12.09.2021, but the law is well settled that an impugned order cannot be improved by

filing a counter affidavit. In this case, the impugned order does not mention anything about personal hearing and therefore, the submission now that a personal hearing was granted and that too in the short one day interval does not hold water. There is no difficulty in accepting the submission of learned Revenue counsel that it is not statutorily imperative to grant personal hearing with regard to refund applications under Section 18 (3) read with Rule 11 (2) of TNVAT Act under TNVAT Rules respectively. However, in this case, the respondent has chosen to grant a personal hearing to the writ petitioner at his discretion. Therefore, this Court is of the view that it is only appropriate that the writ petitioner is granted the opportunity of personal hearing.

8. Regarding the submission that the refund application which has to be filed in Form W should be filed along with copies of invoices and bills of related purchases, there is no difficulty in accepting that sub-rule (2) of Rule 11 of TNVAT Rules is clearly couched in this language, but here again respondent by his own volition has chosen to send a communication to the writ petitioner calling upon the writ petitioner to produce those documents. Therefore, it is appropriate to give an opportunity to produce those documents followed by a personal hearing.

9. Before concluding this matter, it is made clear that the above is recorded to say that the language of sub-Rule (2) of Rule 11 of TNVAT Rules is clear that an applicant qua refund should annex the invoices or bills related to purchases along with this refund application and personal hearing is not statutorily imperative and therefore this order will not serve as a precedent in these aspects of the matter. In the case on hand, the respondent has chosen to call upon the refund applicant to produce documents and has also chosen to give an opportunity of personal hearing and therefore, this order is being passed.

10. Learned counsel for writ petitioner submits, on instructions, that the writ petitioner will now produce the documents and go for a personal hearing on a given date. By consent of both sides, the date, time and venue of personal hearing is fixed as 12.11.2021 (Friday) at 03.00 p.m. in the office of the sole respondent. Learned counsel for writ

petitioner, on instructions, submits that no adjournment will be sought on that day and the writ petitioner will co-operate for disposal of the matter. Captioned five writ petitions are disposed of by making the following order:

a) Five impugned orders, all dated 13.09.2021, bearing reference TIN33162201952/2013-14 for the months of May 2013, June 2013, July 2013, August 2013 and September 2013 are set aside solely on the ground that personal hearing has not been granted to writ petitioner though pre-impugned order notices offer one to the writ petitioner and the writ petitioner could have produced the documents sought for though pre-impugned notices give such an opportunity;

b) By consent of both sides, personal hearing is fixed on 12.11.2021 (Friday) at 03.00 p.m. in the office of the respondent;

c) To be noted, consent is only with regard to date, time and venue of personal hearing, but the order is a contested order;

d) The respondent shall, after holding personal hearing, redo the refund applications i.e., re-do the legal drill under Section 18(3) of TNVAT Act read with Rule 11(2) of TNVAT Rules and conclude the same as expeditiously as his business would permit and in any event within three weeks therefrom i.e., by 03.12.2021;

Captioned writ petitions are disposed of by making the above said order giving aforementioned directives. There shall be no order as to costs.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

GPA/NST

To

The Assistant Commissioner (ST)(FAC)
Annur Circle,
Coimbatore.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.56480

+1cc to the Special Government Pleader (Taxes), S.R.No.57291

W.P.Nos.23507, 23510, 23516, 23517 and 23522 of 2021

VBM(CO)
RLP(08/11/2021)