BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.08.2021
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.[MD]Nos.3569, 3570, 3572 & 3573 of 2020
and
W.M.P.[MD]Nos.3014 to 3017 of 2020

M/s.Rasathe Garments,
Represented by its Partner,
Mr.R.S.Pari Mannavan,
No.443, Main Bazaar,
Virudhunagar. ... Petitioner in all Writ Petitions

Vs.

The State Tax Officer-I,
Virudhunagar. ... Respondent in all Writ Petitions

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Certiorari, calling for the records of the respondent in his proceedings in Assessment Nos.33945720974/2011-12, 33945720974/2012-13, 33945720974/2013-14, 33945720974/2014-15, quash the assessment orders dated 31.12.2019 passed therein.

For Petitioner : Mr.C.Subramanian
for Mr.S.Raja Jeya Chandra Paul
For Respondent : R.Suresh Kumar
Government Advocate

COMMON ORDER

The prayer sought for herein is for Writ of Certiorari, calling for the records of the respondent in his proceedings in Assessment Nos.33945720974/2011-12, 33945720974/2012-13, 33945720974/2013-14, 33945720974/2014-15, quash the assessment orders dated 31.12.2019 passed therein.

2.The petitioner assesse challenged the impugned orders of assessment for the assessment years 2011-2012, 2012-2013, 2013-2014 and 2014-2015. In all these cases, the prime ground taken by the petitioner for challenging the impugned assessment orders is that, at the time of personal hearing, though the petitioner's representative did appear before the respondent for producing the original JJ forms, for the purpose of comparing the same along with the photocopies of the JJ forms already been sent by courier by the petitioner, due to some other official works, in fact the respondent / assessing authority before whom the petitioner's representative appeared on 16.12.2019 to have a personal hearing, could not find time to conduct the personal hearing and receive the original documents which were readily available with the representative of the petitioner ie., JJ forms' original and therefore, the petitioner's representative returned back without producing the original because of want of time on the part of the respondent only.

3.In this context, learned Counsel appearing for the petitioner raised a point by quoting the following findings given by the respondent in the impugned order:

> *"At the time Personal Hearing held in this office on 16.12.2019, the Authorized Representative of the dealer has not produced any Form JJ available with them for verifying the same with the Form JJ Xerox copies which they already sent through courier and the dealer has also failed to produce other supportive documents such as Job work bill or Vouchers, Mode of Payment, Ledger copy of Job Workers in support of their contentions that Form 'JJ' were used only for Job Work purpose and not for sale of finished goods. Thus, the dealer prevented the Assessing Officer from verifying the Form-JJ ie., not legibly made out even as per the standard requirement as provided under TNVAT Act, 2006, which proves the malafide intention of the dealer to evade the legitimate taxes due to the department."*

4.The said finding given by the respondent through the impugned order, as if the petitioner or his representative did not appear before the respondent on 16.12.2019 during the personal hearing, did not produce the JJ form, is factually incorrect because, the petitioner was having the original JJ forms to produce. Had photocopies of the original JJ forms being sent by the petitioner for perusal and verification by the respondents, there could not have been any reason for the petitioner not to produce the original and therefore, without even verifying the original JJ forms which were readily available with the petitioner even at the time and even today, since the orders have been passed as if the petitioner could not produce the original JJ forms, the orders of assessment made through the impugned orders is completely vitiated and therefore, the impugned orders are liable to be interfered with, he contended.

5.However, Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondent, by relying upon various dates given for personal hearing on 01.07.2019, 18.07.2019, 14.08.2019 as well as on 13.09.2019 and 04.12.2019, submitted that, such a large number of personal hearing notices were issued and such personal hearing having been given, despite the same, the petitioner has not utilised the opportunity given. In this context, learned Counsel would submit that on the last date of personal hearing on 16.12.2019, it is an admitted case of the petitioner that the representative of the petitioner did appear, however, though it is the case of the petitioner that the petitioner's representative was having the original JJ form, it could not be produced because of want of time on the side of the respondent., the said statement is totally denied by the respondent, as the opportunity though had been given on 16.12.2019, the same since had not been produced, now the petitioner cannot say that they had been appearing before the respondents on the particular date ie., 16.12.2019, ready with original JJ forms. Therefore, the learned Counsel seeks indulgence of this Court by dismissing the writ petitions.

6.I have considered the rival submissions made by the learned Counsels and I have perused the materials placed before this Court.

7.Mr.C.Subramanian, learned Counsel for the petitioner still asserted that it was on 16.12.2019 the representative of the petitioner appeared with the original JJ forms, but could not be produced by the petitioner's representative because of want of time as the respondent due to other official works could not devote time for receiving the original JJ forms. In this context, learned Counsel for the petitioner also asserts that even today, the petitioner is readily having the original JJ forms, out of which the photocopies have been sent to the respondents for their consideration, since the receipt of the photocopies of the JJ forms have been accepted, which has been reflected in the said order.

8.If at all the petitioner is still having the original, this Court feels that one more chance shall be given to the petitioner to produce the original for comparing with the xerox filed by the petitioner. If one more opportunity is given, no prejudice would be caused to the respondent. However, if no such opportunity is given, definitely that would prejudice the petitioner, as even though, according to the petitioner, they are having the original JJ forms, if the same could not be produced for want of time or any other reason that may not stand in the way to be fatal for the petitioner. Therefore, this Court is of the view that the matter should be remanded back to the respondent, where a chance could be given for the petitioner to produce the original JJ forms and on production of the same, the respondent shall compare the same with the photocopies and a revised order be passed.

9.In that view of the matter, the following order is passed:

> **"All the impugned orders of assessment are hereby quashed and the matter is remanded back to the respondent for reconsideration. While reconsidering the same, a specific date can be fixed by the respondent by issuing summons and on that date, the petitioner or his representative shall appear before the respondent and produce the original JJ forms or any other original**

documents which were required to be produced on behalf of the petitioner for the perusal of the respondent and on such production, the same can be verified and a revised order can be passed. In this context, it is made clear that, once the summon is issued and received by the petitioner, on the particular date, if the petitioner or his representative does not appear, the respondent shall proceed with passing the revised order, based on the available records. The needful as indicated above shall be done by the respondent within a period of eight [8] weeks from the date of receipt of a copy of this order.

10.Accordingly, these Writ Petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer-I,
Virudhunagar.

+1 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-25418[F] dated 05/08/2021)

+1 CC to M/s.The Special Government Pleader (SR-25524[F] dated 06/08/2021)

COMMON ORDER MADE IN
W.P.[MD]Nos.3569, 3570,
3572 & 3573 of 2021
05.08.2021

RS (24.08.2021) 4P 4C