BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2021
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14126 of 2019 and
W.M.P.(MD)No.10588 of 2019

Tvl.Yuvaraj Steel Industries,
Rep. by its Proprietor,
G.Sadasivam. ... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The State Tax Officer,
Madurai Rural (South) Assessment Circle,
Commercial Taxes Complex,
Dr. Thangaraj Salai,
Madurai - 625 020. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in TIN:33615164715/2014-15 dated 29.03.2019 and quash the same.

For Petitioner	:	Mr.B.Rooban, for Mr.Raja. Karthikeyan.
For Respondents	:	Mr.S.Dayalan, Government Advocate(Crl. Side).

O R D E R

Heard the learned counsel on either side.

2. The petitioner is a dealer registered with the second respondent. The subject matter pertains to the assessment years 2014-15. The petitioner's assessment was finalised on a deemed assessment basis under Section 22(2) of Tamil Nadu Value Added Tax Act and subsequently there was an inspection of the petitioner's business premises on 19.09.2016. The inspecting team came across certain discrepancies. In the meanwhile, verification of the intranet departmental website revealed that there is a mismatch of purchase as per Annexure I of buyer and Annexure II of seller at the other end. The second respondent issued pre-revision notice dated 06.02.2019. The petitioner gave a reply. Rejecting the same, the second respondent partially confirmed the proposals set out in the

pre-revision notice. To this effect, the impugned order dated 29.03.2019 came to be passed. Questioning the same, this writ petition came to be filed.

3. The second respondent has filed counter affidavit opposing the prayer in the writ petition. The learned Government Advocate took me through the averments set out therein and proposed to dismiss the writ petition. The learned Government Advocate also submitted that the writ petition is not maintainable in view of the availability of alternative remedy.

4. I carefully considered the rival contentions and went through the materials on record.

5. At the very outset, the learned counsel appearing for the petitioner on instructions submitted that he would remit 10% of the tax amount demanded by the second respondent within a period of three weeks from the date of receipt of a copy of this order. Of course this payment will be made without prejudice to the petitioner's contentions. The said undertaking to remit 10% of the tax amount demanded by the second respondent in the impugned order is placed on record.

6. The learned counsel would point out that when the concluded assessment is said to be reopened by citing the mismatch in the intranet departmental website, it is the duty on the part of the assessment authority to conduct an enquiry with the other end dealer. This proposition has been firmly and authoritatively held in JKM Graphics Solutions P. Ltd., V. C.T.O.(Mad) reported in (2017) 99 VST 343(Mad). He pointed out that the procedure laid down in the said case has not at all been adhered to in this case.

7. It appears that the Government filed a petition seeking review of the order made in J.K.M.Graphics case. It is now stated at the Bar that even while dismissing the review petition, some observations were made. The fact remains that the procedure laid down in J.K.M.Graphics has not been followed in this case.

8. On this sole ground, the order impugned in this writ petition stands quashed. I further note that even though the petitioner has furnished certain material evidence in support his contentions, they have been casually brushed aside. For these twin reasons, I quash the impugned order and the matter is remitted to the file of the second respondent to hear the issue and pass orders afresh. The second respondent will follow the procedure as laid down in J.K.M.Graphics case(as reviewed). The second respondent will also issue fresh hearing notice to the petitioner and thereafter pass orders afresh in accordance with law. The petitioner is also directed to pay 10% of the tax amount demanded by the second respondent within a period of three weeks from the date of receipt

of a copy of this order. The writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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:

1. The Commissioner of Commercial Taxes,
   O/o.The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The State Tax Officer,
   Madurai Rural (South) Assessment Circle,
   Commercial Taxes Complex,
   Dr. Thangaraj Salai,
   Madurai - 625 020.

+1 CC to M/s.SPL GP (SR-5886[F] dated 18/02/2021)

+1 CC to M/s.B.ROOBAN, Advocate (SR-6055[F] dated 19/02/2021)

W.P.(MD)No.14126 of 2019
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