BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.09.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)Nos.16606 & 16607 of 2021

and

W.M.P.(MD)Nos.13480 & 13481 of 2021

M/s. Susee Automobiles Pvt., Limited,
Rep. by its Director,
J.Rajiv Subramanian ...Petitioner in both cases

-Vs-

The State Tax Officer,
Thirupparankundram Circle,
Madurai - 20,
Madurai District. ... Respondent in both cases

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings in TIN No.33143521454/2008-09 & 2009-10, respectively, dated 28.06.2021, quash the same as illegal and violative to the principles of natural justice.

In both cases:

For Petitioner : Mr.S.Rajasekar
For Respondents : Mr.R.Sureshkumar
Government Advocate

COMMON ORDER

Since the petitioner/Assessee has challenged the impugned orders of Assessment for the Assessment Years 2008-09 and 2009-10, both the writ petitions are heard together, and disposed of by this common order.

2. Prayer sought for herein is for a Writ of Certiorari, to call for the records on the file of the respondents in its impugned proceedings in TIN No.33143521454/2008-09 & 2009-10, respectively, dated 28.06.2021, quash the same as illegal and violative to the principles of natural justice.

3. That the petitioner is a dealer registered under the Tamil

Nadu Value Added Tax Act, 2006 (in short 'the Act'). Insofar as the Assessment Year 2008-09 and 2009-10, respectively, the self-assessment order was deemed to be accepted by self-assessment orders, dated 14.03.2021 and 16.03.2012, respectively.

4.However, subsequently a pre-revision notice was issued on 15.03.2012 and 21.03.2012, respectively, pursuant to which, revised order was passed on 17.07.2012. It was the subject matter of writ petitions in W.P(MD)Nos.11453 of 2011 and 11463 of 2011, where, this Court, by Order, dated 16.10.2012, set aside those revised assessment orders and remitted the matter back to the revenue for reconsideration.

5.However, pursuant to the same, the revenue has not proceeded further, but, at the same time, on 13.03.2015, there was an audit inspection conducted under Section 64(4) of the Act, by the officials of the Enforcement Wing, at the premises of petitioner, and during the course of audit, according to the revenue, there had been some defects found with regard to the turnover and taxable turnover in the monthly returns corresponding to the assessment years 2008-09 and 2009-10, which resulted in issuing notice on 31.01.2017.

6.The said notice was replied by the petitioner on 20.04.2018, nevertheless, a second notice was also issued on 20.08.2018. This time, the second notice was faced by the petitioner with detailed reply, dated 22.02.2019, along with the same, according to the petitioner, there has been a voluminous documents running to nearly about 380 pages, had been annexed and the said reply to the second show cause notice, dated 22.02.2019, along with the said documents, were received and acknowledged by the concerned Assistant Commissioner of the Revenue on 22.02.2019.

7.Thereafter a pre-revision notice was also issued on 12.09.2019, where, altogether, apart from the subject raised in the show cause notice, dated 31.01.2017 and 20.08.2018, new issues had come up first time and a second time, pre-revision notice, dated 17.10.2019, was also issued. Those notices were replied on 10.12.2019, by the petitioner and thereafter, on 16.12.2019, a personal hearing notice was given, pursuant to which, on the date fixed for personal hearing, the petitioner's representative appeared and sought for some more time to meet the additional points raised in the pre-revision notice, dated 12.09.2019 and also the petitioner had raised a point, that the said revision notice, dated 12.09.2019, is time barred.

8.Thereafter, the respondent revenue passed the revised assessment order, dated 28.06.2021, for both assessment years, whereby, several alleged escape of tax or reversal of ITC was found out, and accordingly, they passed the revised assessment orders for both assessment years, with demand along with penalty to the tune of Rs.80,75,71,190/- and Rs.2,56,486/-, respectively.

9.Aggrieved over the said order of re-assessment, dated 28.06.2021, the present writ petitions have been filed.

10.Heard, Mr.S.Rajasekar, learned counsel appearing for the petitioner, who, having reiterated the afore-stated factual matrix, would further submit that, insofar as the earlier revised assessment order, dated 17.07.2012, which was quashed by this Court, by Order, dated 16.10.2012, thereafter, eventhough the matter was remitted, the revenue has not further proceeded in that aspect.

11.However, in view of the subsequent audit inspection under Section 64(4) of the Act, dated 13.03.2015, the second set of notices were issued on 31.01.2017 & 20.08.2018. Both notices were responded by giving a reply and the second reply, dated 22.02.2019, was a detailed reply consisting of documents running about 380 pages. Therefore, that should have been considered by the respondents, before deciding the revised assessment.

12.In this context, the learned counsel for the petitioner would further submit that, further pre-revision notice, dated 12.09.2019 and 17.10.2019 are not in continuation of earlier notices, dated 31.01.2017 & 20.08.2018 as new issues had raised first time, therefore, a stand was taken by the respondents that such a pre-revision notice, dated 12.09.2019 is time barred, and also, in the reply notice, dated 10.12.2019, the petitioner sought for some more time to respond, however, without giving any such time, and without considering the detailed reply already given by the petitioner on 24.04.2018 & 22.02.2019 and 24.04.2018 & 28.02.2019 respectively, along with documents, the impugned revised assessment order, dated 28.06.2021, has been passed. Therefore, it is a clear case of violation of principles of natural justice as none of the defence taken or reply given with supporting documents, had been taken into account by the respondents as nothing is reflected in the impugned order, as if that, they have taken into account those documents.

13.Therefore, on that ground, the learned counsel for the petitioner would submit that the petitioner has approached this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, he seeks indulgence of this court.

14.Per contra, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondents, on instructions, would submit that, insofar as the plea taken by the petitioner that, it is time barred is concerned, it is not in fact time barred, as the earlier revised order of assessment, dated 17.07.2021, was quashed by this Court, by order, dated 16.10.2012, subsequently, fresh notice was issued on 23.11.2012, therefore, after excluding the period, where the issue was pending before this Court under Section 27 (7) of the Act, if we calculate the period of limitation, since notice was issued on 31.01.2017, it is within six years period, therefore, it is not at all time barred. Therefore, the said defence taken by the petitioner primarily during the time of personal hearing while asking further time, is not tenable. Hence, on that ground, the revenue cannot be prevented from proceeding further to pass the assessment order, as such the ground of limitation taken by the petitioner cannot be sustained, he contended.

15. He has also submitted that, insofar as the plea taken by the petitioner that, along with reply, dated 22.02.2019 and 28.02.2019, the petitioner has given a voluminous documents running about 380 pages, and the same has been acknowledged by the then Assistant Commissioner is concerned, no such documents had been filed by the petitioner and no such documents are available on the file of the respondents. Therefore, the question of considering any such documents as claimed by the petitioner does not arise in this case, he contended.

16.I have considered the rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

17. Since the grounds could be urged before this Court against the impugned order of assessment, without exhausting appeal remedy, is very limited, however, in the context violation of principles of natural justice, the learned counsel appearing for the petitioner is able to demonstrate before this Court that, in response to the notice, dated 31.01.2017, reply was given on 24.04.2018, further, the second show cause notice was given, for which, a second detailed reply with documents had been supplied by the petitioner, on 22.02.2019. However, if we look at the impugned order, the reply, dated 22.02.2019, has not at all been referred. In this context, the learned Government Advocate has taken a defence that, no such documents or reply available in the file, however, the copy of the reply, dated 22.02.2019 along with the index of documents filed along with the said reply have been filed by the petitioner in the typeset of documents, where, it could be found that the Assistant Commissioner concerned, on 25.02.2019, has signed in the acknowledgement stating that, he received records and explanation before him. When such being the position, whether the reply, dated 22.02.2019, along with the documents received by the respondent revenue in person, by the concerned official, had been part and parcel of the file or not is the question.

18. In this context, though a stand of the revenue taken through the learned Government Advocate that, no such documents are available, this Court has to draw inference that, since the petitioner is able to file acknowledgement from the concerned official who has signed there on 25.02.2019, of course, without the office seal, prima facie, the said plea taken by the petitioner can be accepted.

19. In that case, it is a clear case of non-consideration of the reply with documents supplied by the petitioner, before passing the impugned order, therefore, in that view of the matter, it can be safely concluded that the principles of natural justice has been violated in this case, to that extent, therefore, for that reason, the impugned order can very well be interfered with.

20. In view of the afore-stated facts and circumstances and the discussions hereinabove made, this Court is inclined to dispose of these writ petitions with the following order:

> *"that the impugned orders in these writ petitions are quashed. The matters are remitted back to the respondent for reconsideration. During the reconsideration process, the petitioner shall file one more set of reply, dated 22.02.2019 and 28.02.2019, respectively, with number of documents annexed therein, running about 380 pages, within a period of two(2) weeks, from the date of receipt of a copy of this order. It is open to the respondents to pass final orders, of course, after giving a chance of personal hearing to the petitioner, for which a separate communication can be sent by the respondents to the petitioner."*

21. It is made clear that, hereafter, whenever, any reply or document is received from the Assesse/Dealer, by the revenue side, that is, the officer concerned, if he received the same in person, he should sign the acknowledgement with the official seal of the office concerned, and a copy of the same shall be kept in the office file without any default.

22. It is further made clear that, if any such official of the respondent Department has not followed the afore-stated procedure, while receipt of the documents in person, disciplinary proceedings can be taken against such officials by the concerned Disciplinary Authority.

23. With these directions and observations, these writ petitions are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PNM/PJL

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,
Thirupparankundram Circle,
Madurai - 20,
Madurai District.

+1 CC to M/s.SPL. GP (SR-29330[F] dated 16/09/2021)

W.P.(MD)Nos.16606 & 16607 of 2021
15.09.2021

AM(CO)
SB(28.12.2021) 6P 3C