BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)Nos.17305 to 17309 of 2021
and
W.M.P.(MD)Nos.14195, 14197, 14201, 14202, 14204 of 2021

M/s. New Tower Authomobiles,
Represnted by its Proprietor,
Mr.M.Kamaludeen. ...Petitioner (in all WPs)

-Vs-

The Assistant Commissioner (ST)(FAC),
Pudukkottai I Assessment Circle,
C.T.Buildings, Kattupudukulam,
Pudukkottai - 622 001. ...Respondent (in all WPs)

Common Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in TIN 33364101490/2011-2012, TIN 33364101490/2012-13, TIN 33364101490/2013-14, TIN 33364101490/2014-15, TIN 33364101490/2015-16 dated 13.08.2021, 12.08.2021, 12.08.2021, 12.08.2021, 12.08.2021 respectively and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan (in all WPs)
For Respondent : Mr.R.Sureshkumar (in all WPs)
Government Advocate

COMMON ORDER

The prayer sought for herein is the Writ of Certiorari, to call for the records of the respondent in TIN 33364101490/2011-2012, TIN 33364101490/2012-13, TIN 33364101490/2013-14, TIN 33364101490/2014-15, TIN 33364101490/2015-16 dated 13.08.2021, 12.08.2021, 12.08.2021, 12.08.2021, 12.08.2021 respectively and quash the same as illegal, arbitrary and against the principles of natural justice.

2.The petitioner is a dealer registered under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “TNVAT Act” in short). Insofar as the assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, proceedings for revised assessment under Section 27 of the TNVAT Act was initiated and the revised assessment had been made, as against which, the petitioner filed an appeal before the appellate Authority and the appeal was allowed and the matter was once again remitted back to the assessing authority to redo the revised assessment, pursuant to which, a show cause notice was issued to the petitioner on 08.07.2021 followed by a notice for personal hearing dated 30.07.2021, under which, the personal hearing was fixed on 09.08.2021.

3.However, the petitioner on 04.08.2021 appeared before the assessing Officer and had given a written request, which reads thus:

> *"I have received your notice dated 08.07.2021 on 18.07.2021 calling for objections for assessment years 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 and also to produce relevant documents in support of my accounts. I also directly met your Honour in your office 10 days back, and discussed regarding above notice.*
> *After that I was engaged in attending my brothers treatment who is serious. After a week my brother expired and I am not able to attend my regular work. In the impact my health also slightly affected. At this situation I may kindly request your good selves to allow me 30 days time to submit accounts. Sorry for the delay and please bear the same with us."*

In response to the said written request, there has been manual endorsement made by the Assessing Officer concerned, which reads thus:

> *"As the case was pending over time, the extension of time may not yield necessary / relevant details required, hence it is restricted."*

4.By making such an endorsement, the respondent assessing officer passed orders of assessment under Section 27(1)(a) of the TNVAT Act on 12.08.2021 and 13.08.2021. Aggrieved over the same, present batch of writ petitions has been filed.

5.Heard, Mr.K.Soundararajan, learned counsel appearing for the petitioner, who has heavily relied upon the circular issued by the Principal Secretary to Government of India, Tamil Nadu Commercial Taxes Department, dated 24.02.2021, wherein para 3.3 under the heading "Procedure to be followed in the cases of mis-match" has been relied upon. To appreciate the same, the relevant portion of the circular is extracted hereunder:

> *3.3. <u>Procedure to be followed in the case of Mis-match:</u>*
> *3.3.1. The assessing authority who has raised the dispute of mismatch (herein after called as Original Assessing Authority) shall list out all such pending mismatch cases in respect of his/her assessment circle and report to the DC/JC as well*

as in the next statistics to be furnished after this circular comes into effect, for which suitable table is being prescribed and thereafter the report the progress every month.

3.3.2. The Original Assessing Authority shall undertake verification mismatch transaction report in the department intranet website (tnvat.go.in) with reference to the data available at both the ends ie., buyer and seller. On verification of the data, if the Original Assessing Authority could reconcile verification of the data, if the Original Assessing Authority could reconcile the mismatch and finds that the mismatch is due to clerical or inadvertent error the Assessing Authority shall pass appropriate orders dropping further action.

3.3.3. If the Original Assessing Authority is unable to resolve either the whole or part of the mismatch, then the Original Assessing Authority shall issue notice to the dealer concerned indicating the discrepancy with an opportunity to show case to reconcile the same. After the receipt of reply and after due enquiry the Original Assessing Authority finds that the seller has effected the transaction shall make a request to Other End Assessing Authority through email (zimbra mail) marking copy to concerned DC and JC and seek for the requisite details of verification. If an enquiry Original Assessing Authority is of the view buyer has made bogus claim / wrong claim, by being involved in bill trading by producing bogus invoice, etc., the buyer shall be assessed to tax/reversal of ITC as the case may be, then the Original Assessing Authority shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006.

3.3.4. The Other End Assessing Authority shall verify the details provided to him / her with reference to the manually filed original/revised returns or by issuing show cause notice and calling for the details from the dealer. After the receipt of reply and after due enquiry, the Other End Assessing Authority finds that the seller has reported the transaction and paid the tax due shall report the same to Original Assessing Authority and both of them shall drop further *proceedings and on the other hand that if the whole or part of the transactions are not reported by the seller, then shall initiate assessment proceedings against the seller and shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006. The result of such action shall be reported to the Original Assessing Authority.*

3.3.5. The Assessing Authority should issue show cause notice along with all the details connected to the assessment seeking objections. On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing). The assessing officer shall grant adequate opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu, the Assessing Authority can summon the other end dealer and on request a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days."

6.By relying upon the procedure contemplated the said circular in para 3.3 as referred to above, the learned counsel for the petitioner would contend that there must be a show cause followed by a personal hearing and in this regard, if there is any mis-match of documents at the end of supplier side, the documents can be verified by taking the concerned assessing officer's intranet website and that procedure has not been followed by the respondent. He also submitted that even though personal hearing notices dated 08.07.2021 & 30.07.2021 were given, giving a date of personal hearing on 09.08.2021, due to unavoidable circumstances, as the brother of the petitioner suddenly expired, the petitioner could not concentrate his regular work. Therefore, he did appear before the assessing officer on 04.08.2021 and made a written request for giving time of 30 days to submit relevant accounts. However, after receipt of the same, the respondent has not given such time and by rejecting the said request made by the petitioner, since straightaway the impugned orders of assessment have been passed, it is clear violation of the procedure contemplated under the said circular and also the violation of principles of natural justice. Therefore, on that ground alone, the impugned orders are liable to be interfered with, he contended.

7.Per contra, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondent, who on instructions would submit that already assessment orders have been passed, as against which, the petitioner filed an appeal, which was allowed and the matter was remitted back directing the respondent to issue notice, which was earlier complied with. Therefore, in order to comply with the said procedure as has been contemplated in the Circular as referred to above, personal hearing notice was also given fixing the personal hearing on 09.08.2021. Therefore, the petitioner was having time upto 09.08.2021. Therefore, within the said time, he could have submitted the relevant accounts. Despite that, he made a written request on 04.08.2021, as if he requires further 30 days time from 04.08.2021. That was considered and granted time ie., restricting time period given upto 09.08.2021. Therefore, still the petitioner had time upto 09.08.2021 and those accounts could have been submitted and he could have appeared for personal hearing on 09.08.2021 and he must have taken a chance. Therefore, it cannot be stated that in this case, neither the procedure contemplated under the scheme has been violated, nor the principles of natural justice has been violated. Therefore, on the said grounds, these assessment orders in the batch of writ petitions cannot be successfully assailed by the petitioner in the batch of writ petitions, as he cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, against the impugned orders, where the appeal provisions are very well available to the petitioner to prefer appeal within 30 days before the Appellate Deputy Commissioner (ST), Thanjavur and therefore, the petitioner can be relegated to file an appeal, he contended.

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

9.It is settled proposition that as against the impugned orders, the petitioner can very well file an appeal under the provisions of the TNVAT Act, which is also indicated in the impugned orders. However, the petitioner has chosen to file these writ petitions, of course on the only ground of alleged violation of principles of natural justice.

10. Whether such a violation has taken place is the only question to be looked into. In this context, the learned counsel for the petitioner heavily relied upon the procedure contemplated in the Circular dated 24.02.2021 and relevant portion has already been quoted hereinabove, where the exhaustive procedure has been contemplated to give an opportunity of show cause to the concerned person and after receipt of reply, after due enquiry, the original assessing authority finds that the same has to be effected on the transaction or shall make a request to other-end assessing authority through e-mail marking copy to the concerned Deputy Commissioner or Joint Commissioner, to seek for request details for verification. In the cases in hand, whether the procedure has been adopted by the respondent assessing authority is not known.

11. Assuming that he has adopted the said procedure, under 3.3.5 of the circular, the assessing authority should issue a show cause notice, along with all the details concerned in these cases. Such a show cause notice was issued. Thereafter, on receipt of objections, the assessing authority shall fix a date and time for physical hearing. Of course, personal hearing has been fixed on 09.08.2021. However, before 09.08.2021, on 04.08.2021, the petitioner did appear before the assessing authority and had given a written request stating his unavoidable personal reasons, where he lost his family member and sought for 30 days time.

12. If at all 30 days time sought for by the petitioner had not been accepted or rejected, that could have been communicated to the petitioner, but it is endorsed in the said letter stating that the case was pending over time and therefore, the time limit has been restricted. Restricted means, whether he has restricted only upto 09.08.2021 or any other date has not been specifically mentioned.

13. Be that as it may, since due to some acceptable personal reasons where the petitioner has lost his family member, which has been specifically mentioned in letter dated 04.08.2021, some reasonable time, four weeks if not, two weeks as sought for by the petitioner could have been given by the assessing authority to the petitioner, as the petitioner in his letter dated 04.08.2021 has undertaken to submit accounts, if 30 days time is given to the petitioner. Therefore, this Court feels that if such details as has been contemplated in the circular dated 24.02.2021 could have been submitted, the assessing officer could have been considered the said request dated 04.08.2021 of the petitioner. Some breathing time could have been given enabling the petitioner to submit the accounts, for which, the reasons he has rejected through his endorsement as stated above and therefore, this Court feels that this case can also fall under the category of violation of principles of natural justice or the procedure contemplated under the circular. Therefore, on that ground, the impugned orders can be interfered with. In the result, the following orders are passed in the writ petitions:

> that the impugned orders in these writ petitions are quashed and the matters are remitted back to the respondent for reconsideration. While reconsidering the same, the assessing authority shall give three weeks time to the petitioner to produce the records and at the end of three weeks time, a personal

hearing date shall also be mentioned in the notice and on that date or before which, the records shall be produced by the petitioner. On the date of personal hearing, the petitioner without fail, shall appear and participate in the personal hearing. After completing this exercise, it is open to the Assessing Authority to pass orders on merits and in accordance with law.

14. It is made clear that no further opportunity on any ground shall be given to the petitioner and in this regard, no further request for grant of any further time or extension of time shall be entertained by the respondent assessing authority.

15. With these directions, all these Writ Petitions are disposed of to the terms as indicated above. 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)

pnm/sm

To

The Assistant Commissioner (ST)(FAC),
Pudukkottai I Assessment Circle,
C.T.Buildings, Kattupudukulam,
Pudukkottai - 622 001.

+1 CC to M/s.SPL. GP (SR-30160[F] dated 24/09/2021)

+5 CC to M/s.K.SOUNDARARAJAN, Advocate (SR-30288[F] dated 27/09/2021)

Common Order made in
W.P.(MD)Nos.17305 to 17309 of 2021
Dated:**23.09.2021**

srk(CO)
TR(13.12.2021) 7P 8C