BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.12.2021
CORAM
THE HON'BLE MR. JUSTICE M.SUNDAR
W.P(MD)Nos.17547 to 17550 of 2015
and M.P.(MD)Nos.1, 1, 1 and 1 of 2015

M/s.Jasmine Towels Private Limited,
Represented by its Director Ritan N.Thakker,
No.125, Aruppukottai Main Road,
Perungudi, Madurai. ... Petitioner in all W.Ps.

Vs.

The Assistant commissioner (CT),
Thirupparankundram Assessment Circle,
Madurai. ... Respondent in all W.Ps.

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, call for the records on the file of the respondent in TIN.No.33456230736/2010-11, TIN.No.33456230736/2011-12, TIN.No.33456230736/2012-13 and TIN.No.33456230736/2013-14 dated 30.06.2015 and quash the same as illegal and contrary to the provisions of the Act and direct the respondent to pass a assessment order afresh after affording the opportunity of being heard.

For Petitioner (In all W.Ps) : Mr.S.Karunakar
For Respondent (In all W.Ps) : Mr.M.Lingadurai, Special Government Pleader.

COMMON ORDER

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

2. Captioned four writ petitions have been filed assailing four separate revisional orders dated 30.06.2015. To be noted, these revisional orders are under Sections 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity. These four revisional orders pertain to four different assessment years viz., 2010-11, 2011-12, 2012-13 and 2013-14 qua writ petitioner / dealer under TNVAT Act and they bear reference TIN.No.33456230736/2010-11, TIN.No.33456230736/2011-12, TIN.No.33456230736/2012-13 and TIN.No.33456230736/2013-14. These four revisional orders have been assailed in the main writ petitions and therefore, the same shall be collectively be referred to as 'impugned orders'.

3. Mr.S.Karunakar, learned counsel for writ petitioner submitted that the writ petitioner is a manufacturer and exporter of terry towels, there was deemed assessment qua writ petitioner under Section 22(2) of TNVAT Act with regard to the aforementioned assessment years. Thereafter, the place of business of the writ petitioner was inspected by Enforcement Wing Officers on 21.01.2014 and it was pointed out that the writ petitioner has not reversed ITC for manufactur of exempted goods as per Section 19(5)(a) of TNVAT Act. Pursuant to the proposals of Enforcement Wing, according to the respondent pre-revisional notices dated 18.08.2014 were issued to the writ petitioner, the same were received by the writ petitioner on 31.08.2014 but the writ petitioner-dealer did not reply and did not produce any records. To be noted, this is recorded in the impugned orders.

4. Learned counsel for writ petitioner submits that no pre-revisional notices were served and therefore, in the previous listing on 15.11.2021, the following proceedings were made:

> *'The central issue in the captioned writ petitions is whether pre-revisional notices dated 18.08.2014 was served on the writ petitioner-dealer on 31.08.2014 as mentioned in the impugned orders.*
>
> *2. Learned counsel for writ petitioner draws the contention of this Court to Rule 19 of the 'Tamil Nadu Value Added Tax Rules, 2007' (hereinafter 'said Rules' for convenience and clarity) and submits that the same has not been served on the writ petitioner in accordance with Rule 19.*
>
> *3. This Court finds that the writ petitioner has not chosen to file a rejoinder to the counter-affidavit of the Revenue refuting the assertion in the counter-affidavit that 18.08.2014 pre-revisional notices were served on the writ petitioner on 31.08.2014.*
>
> *4. However, with the intention of dousing this controversy, learned Revenue counsel shall produce the records in the next listing.*
>
> *5. List after a fortnight.*
>
> *6. List on 01.12.2021.'*

5. Pursuant to the aforementioned proceedings, 18.08.2014. pre-revisional notices (4 notices) with what according to the respondent are acknowledgements were placed before this Court and the same are as follows:

Tin:33456230736/2010-11
Roc.A4.647/2014

O/o the Asst.Commissioner (CT)
Thirupparankundram Circle
Date: 18.8.2014

PRE ASSESSMENT NOTICE

Sir,

Tvl.Jasmine Towels (P)Ltd ,Madurai are manufacturer cum exporter of terry towels, doing business at No.125 Aruppukottai main road, Perunguid,Madurai.12.Youhave been assessed on a total and taxable turnover of Rs.3,56,08,520/- and Rs.3,07,71,841/-respectively by accepting the returns U/s 22(2) of the act for the year 2010-11.

You have reported the following turnover reported as below:-

ITC DURING THE YEAR

1.ITC on purchase during yr.	57,86,264.00	Vat. Taxable sales	Rs.3,07,71,841.00
2. " " on Capital goods	2,01,727.00	Exempted sales	Rs. 48,36,679.00
3. Total ITC claimed	**59,87,991.00**	**Total sales**	**Rs.3,56,08,520.00**

You are an exporter of terry towels, and reported zero rated sales of Rs.29,75,23,894.00 and claimed form W refund of Rs.45,45,581.00 and the document s for export were filed with the claim.

Your place of business was inspected by the Enforcement Wing Officers on 21.01.2014 has pointed out that you have not reversed the I TC for the manufacture of exempted goods as per Sec 19(5(a)of the TNVAT Act.06

You have effected sales of fabrics and Hank yarn to a value of Rs.48,36,679.00which are Exempted from tax U/s 15 of the act. The Input tax credit taken to be reversed for that portion of The raw materials consumed. Therefore the reversal works out to as detailed below:

$$\frac{\text{ITC x Exempted turnover}}{\text{Total turnover}} \qquad \frac{5987991 \times 4836679}{362530884} = \text{Rs.}79{,}888.00$$

Further you have not reversed or deducted the ITC for refund claim in Form W for that year.

In view of the above ,I reverse the input tax credit for the year 2010-11 as Details below:

ITC on purchase	Rs. 57,86,264.00	Eligible ITC	59,08,103.00
Capital goods	Rs. 2,01,727.00	Ded:.Form W	45,45,581.00
Total ITC claimed	Rs. 59,87,991.00	Net ITC	13,62,522.00
LESS:reversal for Exempted sales.	Rs 79,888.00	Vat adjusted	12,13,254.00
Eligible ITC	Rs.59,08,103.00	Excess	+ 1,49,268.00

The CST assessment will be dealt in separately.

A further verification made with P& L accounts ,Balance sheet in schedules of the Fixed assets, you have entrusted the work of construction of buildings to a value of Rs.1,29,33,590/- As per sec.13 of TNVAT Act every person responsible for paying any sum to any dealer for

-2-

Execution of works contract shall at the time of payment such sum deduct and the amount to be paid **At 2% on the construction value. You have not deducted and paid the TDS amount. An interest Will also to bepaid U/s 13(7) of the said act**

Further you have effected the following sales which were not reported in the monthly returns.

i.	Sales of Machineries	Rs.38,13,970.00
ii.	Sales of Vehicles	Rs.19,90,868.00
	Total sales	Rs.58,04,838.00 at 4 %

You have omitted to report the above sales in the monthly returns. Therefore the returns filed by you is Incorrect and incomplete one. The turnover is proposed to be assessed at appropriate rate and also a Penalty will be levied according to law.

Objections if any on the above may be filed in writing with relevant records Before me within 15 days of its receipt, failing in which the above proposal is confirmed.

18/8/14

Assistant Commissioner(CT)
Thirupparankundram.

To
Tvl.Jasmine Towels (P)Ltd
No.125 Aruppukottai Main road,
Perungudi.

Received copy

31/8/2014.

(for Jasmine Towels)

Tin:33456230736/2011-12
Roc.A4.647/2014

O/o the Asst.Commissioner (CT)
Thirupparankundram Circle
Date: 18.8.2014

PRE ASSESSMENT NOTICE

Sir,

Tvl.Jasmine Towels (P)Ltd,Madurai are manufacturer cum exporter of terry towels,doing business at No.125 Aruppukottai main road, Perunguid,Madurai.12.Youhave been assessed on a total and taxable turnover of Rs.1,68,05,471/- and Rs.81,45,621/-respectively by acceptingthe returns U/s 22(2) of the act for theyear 2011-12.

You have reported the following turnover reported as below:-

ITC DURING THE YEAR

1.ITC on purchase during yr	32,00,340.00	Vat. Taxable sales	Rs. 81,45,621.00
2. " " on Capital goods	3,56,339.00	Exempted sales	Rs. 86,59,850.00
3. TotalITC claimed	**35,56,679.00**	**Total sales**	**Rs.1,68,05,471.00**

You are an exporter of terry towels, and reported zero rated sales of Rs.32,36,93,046.00 and claimed form W refund of Rs.30,39,627.00 and the document s for export were filed with the claim.

Your place of business was inspected bythe Enforcement Wing Officers on 21.01.2014 has pointed out that you have not reversed theITC for the manufacture of exempted goods as per Sec 19(5(a)of the TNVAT Act.06

You have effected sales of fabrics and Hank yarn to a value of Rs.86,59,8500which are Exempted from tax U/s 15 of the act. The Input tax credit taken to be reversed for that portion of The raw materials consumed. Therefore the reversal works out to as detailed below:

$$\frac{\text{ITC x Exempted turnover}}{\text{Total turnover}} \qquad \frac{3556679 \text{ x } 4836679}{356722991} = \text{Rs.86,342.00}$$

Further you have not reversed or deducted the ITC for refund claim in Form W for that year.

In view of the above,I reverse the input tax credit for the year 2011-12 as

Details below:

ITC on purchase	Rs. 32,00,340.00	Eligible ITC	34,30,337.00
Capital goods	Rs 3,56,339.00	Ded.Form W	30,39,627.00
Total ITC claimed	Rs. 35,56,679.00	Net ITC	4,30,710.00
LESS:re versal for Exempted sales.	Rs 86,342.00	Vat adjusted	3,88,845.00
Eligible ITC	Rs.34,70,337.00	Excess +	41,865.00

The CST assessment will be dealt in separately.

A further verification made with P& L accounts ,Balance sheet in schedules of the Fixed assets, you have entrusted the work of construction of buildings to a value of Rs.17,87,323/- As per sec.13 of TNVAT Act every person responsible for paying any sum to any dealer for Execution of works contract shall at the time of payment such sum deduct and the amount to be paid **At 2% on the construction value. You have not deducted and paid the TDS amount. An interest Will also to be paid U/s 13(7) of the said act**

Further you have effected the following sales which were not reported in the monthly returns.

i.	Sales of Machineries	Rs.16,25,058.00
ii.	Sales of Vehicles	Rs. 36,550.00
	Total sales	Rs.16,61,608.00 at 4 %

You have omitted to report the above sales in the monthly returns. Therefore the returns filed by you is Incorrect and incomplete one. The turnover is proposed to be assessed at appropriate rate and also Penalty will be levied according to law.

Objections if any on the above may be filed in writing with relevant records Before me within 15 days of its receipt, failing in which the above proposal is confirmed.

Assistant Commissioner(CT)
Thirupparankundram.

To
Tvl.Jasmine Towels (P)Ltd
No.125 Aruppukottai Main road,
Perungudi.

Received copy,
31 .2014.
(For Jasmine Towels)

TTin:33456230736/2012-13
Roc.A4.647/2014

O/o the Asst.Commissioner (CT)
Thirupparankundram Circle
Date: 18.8.2014

PRE ASSESSMENT NOTICE

Sir,

Tvl.Jasmine Towels (P)Ltd,Madurai are manufacturer cum exporter of terry towels,doing business at No.125 Aruppukottai main road, Perunguid,Madurai.12.Youhave been assessed on a total and taxable turnover of Rs.1,45,64,532/- and Rs.93,30,840/-respectively by accepting he returns U/s 22(2) of the act for the year 2012-13

You have reported the following turnover reported as below:-

ITC DURING THE YEAR				
1.ITC on purchase during yr.	51,58,219.00	Vat. Taxable sales	Rs.	93,30,840.00
2. " " on Capital goods	53,345.00	Exempted sales	Rs	52,33,692.00
3. Total ITC claimed	**56,91,564.00**	**Total sales**	**Rs**	**.1,45,64,532.00**

You are an exporter of terry towels, and reported zero rated sales of Rs.32,31,21,460.00 and claimed form W refund of Rs.50,57,611.00 and the document s for export were filed with the claim.

Your place of business was inspected by the Enforcement Wing Officers on 21.01.2014 has pointed out that you have not reversed the ITC for the manufacture of exempted goods as per Sec 19(5(a)of the TNVAT Act.06

You have effected sales of fabrics and Hank yarn to a value of Rs.86,59,8500which are Exempted from tax U/s 15 of the act. The Input tax credit taken to be reversed for that portion of The raw materials consumed. Therefore the reversal works out to as detailed below:

$$\frac{\text{ITC} \times \text{Exempted turnover}}{\text{Total turnover}} \qquad \frac{5691564 \times 5233692}{354716122} = \text{Rs.}83{,}977.00$$

Further you have not reversed or deducted the ITC for refund claim in Form W for that year.

In view of the above,I reverse the input tax credit for the year 2012-13 as

Details below:

ITC on purchase	Rs. 51,58,249.00	Eligible ITC		56,07,587.00
Capital goods	Rs 53,345.00	Ded.Form W		50,57,611.00
Total ITC claimed	Rs. 56,91,564.00	Net ITC		5,49,976.00
LESS:re versal for Exempted sales.	Rs 83,977.00	Vat adjusted		5,37,408.00
Eligible ITC	Rs .56,07,587.00		Excess +	12,568.00

The CST assessment will be dealt in separately.

A further verification made with P& L accounts ,Balance sheet in schedules of the Fixed assets, you have entrusted the work of construction of buildings to a value of Rs.15,74,572/- As per sec.13 of TNVAT Act every person responsible for paying any sum to any dealer for Execution of works contract shall at the time of payment such sum deduct and the amount to be paid **At 2% on the construction value. You have not deducted and paid the TDS amount. An interest Will also to be paid U/s 13(7) of the said act**

Further you have effected the following sales which were not reported in the monthly returns.

i.	Sales of Machineries	Rs.1,02,09,143.00
ii.	Sales of Vehicles	Rs. 37,35,548.00
	Total sales	Rs.1,39,44,691.00 at 5 %

You have omitted to report the above sales in the monthly returns. Therefore the returns filed by you is Incorrect and incomplete one. The turnover is proposed to be assessed at appropriate rate and also a Penalty will be levied according to law.

Objections if any on the above may be filed in writing with relevant records Before me within 15 days of its receipt, failing in which the above proposal is confirmed.

Assistant Commissioner(CT)
Thirupparankundram.

To
Tvl.Jasmine Towels (P)Ltd
No.125 Aruppukottai Main road,
Perungudi.

Received copy.
31/8/2014.
(for. Jasmine Towels).

Tin:33456230736/2013-14
Roc.A4.647/2014

O/o the Asst.Commissioner (CT)
Thirupparankundram Circle
Date: 18.8.2014

PRE ASSESSMENT NOTICE

Sir,

Tvl.Jasmine Towels (P)Ltd,Madurai are manufacturer cum exporter of terry towels,doing business at No.125 Aruppukottai main road, Perunguid,Madurai.12.Youhave been assessed on a total and taxable turnover of Rs.2,10,17,155/- and Rs.1,95,35,300/-respectively by acceptingthe returns U/s 22(2) of the act for theyear 2013-14

You have reported the following turnover reported as below:-

ITC DURING THE YEAR

1.ITC on purchase during yr.	70,89,214.00	Vat. Taxable sales	Rs.	1,95,35,300.00
2. " " on Capital goods	7,86,956.00	Exempted sales	Rs	14,81,855.00
3. TotalITC claimed	**78,76,170.00**	**Total sales**	**Rs**	**.2,10,17,155.00**

You are an exporter of terry towels, and reported zero rated sales of Rs.35,62,55,511.00 and claimed form W refund of Rs 68,31,479.00 and the document s for export were filed with the claim.

Your place of business was inspected bythe Enforcement Wing Officers on 21.01.2014 has pointed out that you have not reversed theITC for the manufacture of exempted goods as per Sec 19(5(a)of the TNVAT Act.06

You have effected sales of fabrics and Hank yarn to a value of Rs14,81,855.00which are Exempted from tax U/s 15 of the act. The Input tax credit taken to be reversed fir that portion of The raw materials consumed. Therefore the reversal works out to as detailed below:

$$\frac{\text{ITC x Exempted turnover}}{\text{Total turnover}} \qquad \frac{7876170 \times 14841855}{379421782} = \text{Rs.}30,761.00$$

Further you have not reversed or deducted the ITC for refund claim in Form W for that year.

In view of the above,I reverse the input tax credit for the year 2012-13 as Details below:

ITC on purchase	Rs70,89,214.00	Eligible ITC	78,45,409.00
Capital goods	Rs 7,86,956.00	Ded.Form W	68,31,479.00
Total ITC claimed	Rs. 78,76,170.00	Net ITC	10,13,930.00
LESS:re versal for Exempted sales.	Rs 30,761.00	Vat adjusted	9,48,105.00
Eligible ITC	Rs .78,45,409.00	Excess +	65,825.00

The CST assessment will be dealt in separately.

Objections if any on the above may be filed in writing with relevant records before me within 15 days of its receipt, failing in which the above proposal is confirmed.

A further verification made with P& L accounts ,Balance sheet in schedules of the Fixed assets, you have entrusted the work of construction of buildings to a value of Rs.13,89,997/- As per sec.13 of TNVAT Act every person responsible for paying any sum to any dealer for Execution of works contract shall at the time of payment such sum deduct and the amount to be paid **At 2% on the construction value. You have not deducted and paid the TDS amount. An interest Will also to be paid U/s 13(7) of the said act**

Further you have effected the following sales which were not reported in the monthly returns.

i.	Sales of Machineries	Rs. 26,78,067.00
ii.	Sales of Vehicles	Rs. 9,88,605..00
	Total sales	Rs. 36,66,672..00 at 5 %

You have omitted to report the above sales in the monthly returns. Therefore the returns filed by you is Incorrect and incomplete one. The turnover is proposed to be assessed at appropriate rate and also a Penalty will be levied according to law.

Objections if any on the above may be filed in writing with relevant records Before me within 15 days of its receipt, failing in which the above proposal is confirmed.

Assistant Commissioner(CT)
Thirupparankundram.

To
Tvl.Jasmine Towels (P)Ltd
No.125 Aruppukottai Main road,
Perungudi.

Received copy

31/12/2014.

(For. Jasmine Towels.)

6. Learned State Counsel submits that the pre-revisional notices have been duly served on the writ petitioner-dealer and therefore, the complaint of writ petitioner does not hold water. Learned State Counsel also pointed out that this has been asserted in the counter affidavit filed by the lone respondent and it has also been recorded in the impugned orders.

7. In response to the above, learned counsel for writ petitioner drew the attention of this Court to Rule 19 of 'Tamil Nadu Value Added Tax Rules, 2007' ('TNVAT Rules' for brevity) which reads as follows:

*'19. **Service of notices, summons or orders**.- (1) The service on a dealer of any notice, summons or order*

under the Act or these rules may be effected either electronically or manually in any of the following ways, namely: -

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative; or

Explanation.- *Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule.*

(b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; or

(c) by sending it to the address of the dealer by registered post; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.'

8. In the case on hand, obviously, the service going by the respondent records has been made under Rule 19(1)(a) of TNVAT Rules. If it is under Rule 19(1)(a), explanation to rule 19(1)(a) assumes significance. A perusal of the explanation would make it clear that the person, who delivers the notice should have made an endorsement and such endorsement will be proof for the purposes of Sub-rule (1)(a). In the instant case, there is no such endorsement in the extracts from the records which have been placed before this Court. The writ petitioner counsel emphatically submits that the pre-assessment notices were not served on writ petitioner and the signature there is not that of anyone concerned with the writ petitioner.

9. Therefore, I am of the considered view that this is a fit case to give the benefit of doubt to the writ petitioner-dealer. This means that it has not been conclusively established {vide explanation to Rule 19(1)(a) of TNVAT Rules} that the pre-revisional notices dated 18.08.2014 have been duly served on the writ petitioner-dealer on 31.08.2014. This further means that the impugned orders will have to be interfered with on this short point and the writ petitioner-dealer has to be given opportunity afresh to show cause.

10. Opportunity afresh to show cause is owing to common proviso to sub-Section (1) and (2) of Section 27 of TNVAT Act, which reads as follows:

'27. Assessment of escaped turnover and wrong availment of input tax credit.-

(1)(a)......

(b).......

(2)

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.'

11. To be noted, this Court in State Bank of India Officer's Association case being W.P.No.22634 of 2019 ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner (ST), Chennai]***, dated 01.08.2019 has made it clear that the expression 'reasonable opportunity to show cause' occurring in aforementioned common proviso to Sub-Sections (1) and (2) of Section 27 does not mean 'personal hearing' and it only means reasonable opportunity to show cause in contradistinction to proviso to Section 22(4) of TNVAT Act where personal hearing is imperative. It was also made clear that personal hearing is entirely at the discretion of the Assessment Officer depending on the facts and circumstances of any given case. The above is mentioned only for clarity and specificity qua this order.

12. In the light of the narrative and discussion thus far, captioned four writ petitions are disposed of by making the following order:

a) Impugned orders being orders dated 30.06.2015, bearing reference Nos.TIN.No.33456230736/2010-11, TIN.No.33456230736/2011-12, TIN.No.33456230736/ 2012-13 and TIN.No.33456230736/2013-14 are set aside on the short point that it has not been conclusively established {qua explanation to Rule 19(1)(a) of TNVAT Rules} that pre-revisional notices have been served on the writ petitioner and therefore, there is infraction of the common proviso to Section 27(1) and 27(2) of TNVAT Act, which makes it statutorily imperative to give a reasonable opportunity to the writ petitioner-dealer to show cause against the impugned orders;

(b) Though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the matter;

(c) The four pre-revisional / assessment notices are now furnished to the learned counsel for writ petitioner and therefore, the writ petitioner-dealer should respond to the same i.e., show cause within a fortnight from today i.e., on or before 15.12.2021. In response to the pre-revisional assessment notices, it is open to the writ petitioner to furnish supporting documents; and

d) Thereafter, the Assessing Officer shall do Section 27 of TNVAT Act legal drill i.e., revisional legal drill on the merits of the response of the writ petitioner-dealer in accordance with law and make orders as expeditiously as possible as his business would permit and in any event within two months from 15.12.2021 i.e., on or before 15.02.2022.

13. Captioned writ petitions are disposed of with the above directives. Consequently, connected captioned writ miscellaneous petitions are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

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 Assistant commissioner (CT),
Thirupparankundram Assessment Circle,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-36851[F] dated 01/12/2021)

+1 CC to M/s.SPL GP (SR-37035[F] dated 02/12/2021)

W.P(MD)Nos.17547 to 17550 of 2015
and M.P.(MD)Nos.1, 1, 1 and 1 of 2015
01.12.2021

SS(CO)
GC(15.12.2021) 13P 4C