



WEB COPY

W.P(MD).No.8112 of 2017

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P(MD).Nos.8112 to 8119 of 2017

and

W.M.P(MD).Nos.6242 to 6249 of 2017

M/s. Jeyakrishna Flour Mills (P) Ltd.,
Rep. by its Managing Director R.K.Mohan

... Petitioner in
all the WP's

-Vs.-

1.The Assistant Commissioner (Commercial Tax),
Thirupparankundram Assessment Circle,
Madurai.

2.The Government of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai - 600 009.

... Respondents
in all the WP's

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarifi calling for the records relating to the order passed by the first respondent in Order No.TIN No.33836230236/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively dated 20.03.2017 and quash the same.

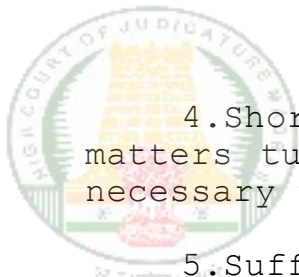
For Petitioner : Mr.J.Sankar Raman (in all W.Ps)
For Respondents : Mr.S.R.A.Ramachandran,
Additional Government Pleader
(in all W.Ps)

COMMON ORDER

This common order will govern the captioned eight main writ petitions and the captioned writ miscellaneous petitions (W.M.Ps) therein.

2.Mr.J.Sankar Raman, learned counsel on record for the writ petitioners in all the eight main writ petitions and Mr.S.R.A.Ramachandran, learned Additional Government Pleader on behalf of both the respondents in all the eight writ petitions are before me.

3.Learned Revenue counsel has filed a counter-affidavit and completed pleadings.



4.Short facts shorn of elaboration will suffice as the entire matters turn on a very narrow compass. In other words, it is not necessary to delve into granular particulars qua factual matrix.

5.Suffice to say in all the eight captioned writ petitions eight different revisional orders made under Section 27 of 'the Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT' for the sake of convenience and clarity] had been called in question. The place of business of the writ petitioner was audited by the Enforcement Wing Officers on 04.03.2015 and proposals on different heads were made. Thereafter, pre-revision notices dated 12.01.2016 were issued and the writ petitioner-dealer sent detailed replies to the pre-revision notices but the impugned orders have been made without considering the objections.

6.Learned Revenue counsel advertng to the counter-affidavit submits that the objections and response of the writ petitioner to the pre-revision notices were before the assessment authority i.e., first respondent.

7.Notwithstanding very many averments in the writ affidavit and notwithstanding several grounds raised in the writ petition, learned counsel for writ petitioner projects his campaign against the impugned orders by making one pointed submission and that is as follows:

The writ petitioner has sent detailed objections/response to pre-revision notices but there is nothing in the impugned orders to demonstrate that the writ petitioner's objections/response to the pre-revision notices had been considered.

8.Responding to the above, advertng to the counter-affidavit, learned State counsel i.e., Revenue counsel submits that the objections were in fact before the first respondent who made the impugned orders under Section 27 of TNVAT Act. The law is well settled that an impugned order cannot be improved by way of a counter-affidavit. In the case in hand, the impugned orders do not make a whisper about the replies of the writ petitioner-dealer to the pre-revision notices.

9.Therefore, the captioned writ petitions are dealt with on the aforesaid short point and I interfere with the impugned orders on this one short point. In other words, all questions are left open to be canvassed before the first respondent.

10.Before I set out the operative portion of this order, I deem it appropriate to mention that for a revision legal drill under Section 27 of TNVAT Act, it is statutorily imperative to give a reasonable opportunity to the dealer to show cause. This is the common proviso to Sub-sections (1) and (2) of



Section 27 of TNVAT Act which reads as follows:

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

(1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of 1 [six years from the date of assessment], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of 2 [six years from the date of assessment], reassess the tax due after making such enquiry as it may consider necessary:

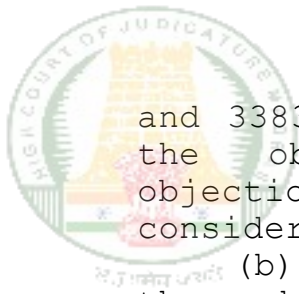
(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of 2 [six years from the date of assessment], reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

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.'

(underlining made by this Court to supply emphasis, for ease of reference and highlighting)

11. That there is a statutory requirement is to give a reasonable opportunity to show cause and that the opportunity has been so given means the response of the dealer has to necessarily be considered while making a revisional order. It may or it may not have been considered by the first respondent but the impugned orders do not say anything about the objections. In other words, there is nothing in the impugned orders to demonstrate that the replies have been considered much less have they been dealt with. In the light of the discussions, narrative and dispositive reasoning thus far, the following order is made:

(a) All the eight impugned orders i.e., orders all dated 20.03.2017 bearing reference Nos. 33836230236/2007-08, 33836230236/2008-09, 33836230236/2009-10, 33836230236/2010-11, 33836230236/2011-12, 33836230236/2012-13, 33836230236/2013-14



and 33836230236/2014-15 are set aside on the short point that the objections of the writ petitioner-dealer being objections/replies to pre-revision notices have not been considered;

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

(c) As pre-revision notices have already been issued, writ petitioner-dealer has sent objections/replies and have even given a personal hearing (though optional and not statutorily imperative) it would suffice if there is a directive to the first respondent to do the revisional legal drill *de novo* and pass orders afresh on available records by considering the objections of the writ petitioner-dealer to the pre-revision notices;

(d) Above legal drill *de novo* shall be completed by the first respondent as expeditiously as the business of the first respondent would permit and in any event within four weeks from today i.e., on or before 22.12.2021.

12. All the eight captioned main writ petitions are disposed of with the above directives. Consequently, captioned writ miscellaneous writ petitions are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Assistant Commissioner (Commercial Tax),
Thirupparankundram Assessment Circle,
Madurai.

2.The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St.George, Chennai - 600 009.

+1 CC to M/s.SPL GP (SR-35895[F] dated 25/11/2021)

W.P(MD) .Nos.8112 to 8119 of 2017

24.11.2021

RS (02.12.2021) 4P 4C

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