IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYANARAYANA PRASAD

Writ Appeal Nos. 312, 315, 316, 317, 318 & 323 of 2022
and
C.M.P. Nos. 2382, 2392, 2399, 2408, 2428 & 2473 of 2022

M/s.Kanunga Extrusion Private Limited,
14-2, Thally Road, Near Railway Gate,
Hosur – 635 109.
Represented by its
Managing Director. ... Appellant in all appeals

Versus

The Assistant Commissioner (ST)
Hosur (South) I
Hosur. ... Respondent in all appeals

Writ Appeals filed under Clause 15 of Letters Patent against the common order passed by this Court in W.P. Nos. 22049, 22056, 22060, 22064, 22066 and 22069 of 2021 dated 21.10.2021.

Common Prayer in W.P. Nos. 22049, 22056, 22060, 22064, 22066 and 22069 of 2021:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the connected records of the impugned proceedings of the respondent herein made in TIN 33163364594/2010-11, TIN 33163364594/2011-12, TIN 33163364594/2012-13, TIN 33163364594/2013-14, TIN 33163364594/2014-15 and TIN 33163364594/2015-16 respectively dated 21.04.2021 and quash the same and illegal.

For Appellant : Mr. Manoharan Sundaram
in all appeals

For Respondent: Mr. M. Venkateswaran
Special Government Pleader
and Mr.V.Prashanth Kiran
Government Advocate in all appeals

COMMON JUDGMENT

[Judgment of the Court was delivered by R.MAHADEVAN,J.]

These Writ Appeals are directed against the order dated 21.10.2021 passed by the learned Judge in W.P. Nos. 22049, 22056, 22060, 22064, 22066 and 22069 of 2021 dismissing the writ petitions filed by the appellant.

2.The Appellant is a dealer in iron and steel and they are assessed to payment of tax vide registration No. TIN.33163364594 under the Tamil Nadu Value Added Tax Act, 2006 (in short, "the TNVAT Act"). For the assessment years from 2010-11 to 2015-16, the respondent proposed to revise the assessment orders under Section 27 of the TNVAT Act on the ground that on verification of the web portal of the Department, it was found that there were mismatch between the turnover reported in the monthly returns filed by the Appellant company and the returns filed by the sellers at the other end. Therefore, the respondent revised the orders of assessment on 30.10.2017 and consequently reversed the Input Tax Credit (ITC) availed by the appellant for the said assessment years.

3.According to the appellant, the Assessing Officer, before reversing the ITC availed by the dealer has to conduct an enquiry on the details of the returns filed by the selling dealer, payment made by the purchasing dealer and payment of tax by the selling dealer etc. and in the absence of conducting one such enquiry, the orders of reversal of ITC are liable to be set aside. Stating so, the appellant filed W.P. Nos. 5818 to 5823 of 2018 challenging the revised assessment orders dated 30.10.2017 and the said writ petitions were allowed by the common order dated 15.03.2018 with a direction to the respondent/assessing officer to conduct an enquiry afresh by getting the details from the central mechanism to verify the mismatch in the returns, if any, and thereafter pass assessment orders for reversing the ITC. It is further stated by the appellant that inspite of such direction, the respondent, without conducting any enquiry and providing an opportunity of personal hearing to the appellant, passed the orders dated 21.04.2021 reiterating the demand for tax. Aggrieved over the same, the appellant filed W.P. Nos. 22049, 22056, 22060, 22064, 22066 and 22069 of 2021.

4.Upon hearing both sides, the learned Judge passed the common order dated 21.10.2021 by concluding that the correctness of the details with respect to mismatch of the turnover mentioned in the returns filed by the appellant cannot be gone into under Article 226 of the Constitution of India and it has to be dealt with only by the Appellate Authority. Accordingly, the learned Judge dismissed the writ petitions filed by the appellant. Seeking to set aside the said order of the learned Judge, the appellant has preferred these appeals before this Court.

5.The learned counsel appearing for the appellant submitted that the respondent being the assessing officer, before reversing the input tax credit availed by the dealer, has to verify and conduct an enquiry on the details of returns filed by the selling dealer, payment made by the purchasing dealer and payment of tax by the selling dealer. Without doing so, the order of reversal of ITC passed by the respondent is bad. Hence, the same is liable to be set aside. The learned counsel further submitted that since the issue involved herein is squarely covered by the decision of this court reported in (2017) 99 VST 343 (Mad) in JKM Graphics Solution Pvt. Limited v. the Commercial Tax Officer, in WP.No.105/2016 etc. batch dated 01.03.2017, the learned Judge by order dated 15.03.2018 in WP.Nos.5818 to 5823/2018 filed by the appellant, set aside the revised assessment orders dated 30.10.2017 for the assessment years in question and remanded the matter to the respondent for fresh consideration in the light of the guidelines issued in the said decision. However, the respondent, without providing an opportunity of personal hearing to the appellant, simply passed the assessment orders dated 21.04.2021 in violation of the order of the learned Judge dated 15.03.2018. When the assessment orders were put to challenge, the learned Judge, instead of quashing the same, directed the appellant to approach the appellate authority by filing statutory appeals, by the order impugned herein, which is arbitrary, illegal and in violation of the principles of natural justice. Thus, the learned counsel sought to allow these writ appeals by quashing the order of the learned Judge.

6.Per contra, the learned Special Government Pleader for the respondent submitted that as directed by this court, the respondent issued notice dated 11.02.2021 to the appellant, in adherence with the principles of natural justice. However, the appellant failed to avail such an opportunity of personal hearing provided to them. Finding no other option, the respondent passed the orders dated 21.04.2021. Taking note of the same, the learned Judge rightly passed the order impugned herein, which warrants no interference by this court.

7.In reply, the learned counsel for the appellant submitted that the notice dated 11.02.2021 referred to in the assessment orders dated 21.04.2021, said to have been sent to the appellant, has not been served on them and hence, the orders so passed by the respondent are clearly in violation of the principles of natural justice.

8.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9.It could be seen that the present appeals arise from the order passed in WP.Nos.22049, 22056, 22060, 22064, 22066 and 22069 of 2021 filed by the appellant in the second round of litigation. Earlier, the appellant challenged the revised assessment orders dated 30.10.2017 by filing WP Nos.5818 to 5823 of 2018, which were disposed of by order dated 15.03.2018, in the light of the decision in WP.No.105/2016 etc. batch dated 01.03.2017, with the following directions:

> "Having regard to the submissions made by the learned counsel on either side and considering the fact that the Assessing Officer has to re-do the assessment, in view of the above said decision of this Court, this writ petitions are allowed and the impugned orders are set aside. Consequently, the matters are remitted back to the Assessing Officer to re-do the assessment commencing from the stage of issuing notice of proposal, after following guidelines/procedures issued by this Court in the above referred order. The Assessing Officer shall also give personal hearing to the petitioner before finalizing the order of assessment. Whole exercise shall be completed by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

10.Pursuant to the aforesaid order of this court, the respondent passed the assessment orders dated 21.04.2021 for the assessment years in question, the relevant passage of which is usefully extracted below:

> "Against the assessment order in the reference 1st cited, the dealer have filed writ appeal before the Hon'ble High Court of Madras. The High Court of Madras in the reference 2nd cited, has set aside the assessment orders and directed redo the assessment by issuing opportunity of personal hearing. Hence based on the High Court order notice has been issued to the dealer as per the reference 3rd cited.
>
> But the dealer failed to submit the reply.
>
> Hence in the view of the above circumstances their total and taxable turnover is assessed u/s 27 of TNVAT act 2006....
>
> ....
>
> A notice in form 'O' issued"

Thus, it is evident from the aforesaid assessment orders that the respondent without following the guidelines / procedures laid down in the order dated 01.03.2017 in WP.No.105/2016 etc. as well as without providing an opportunity of personal hearing to the appellant, as directed by this court in the earlier order dated 15.03.2018 in WP.Nos.5818 to 5823 of 2018, has passed the same relating to the assessment years in question.

11.On the other hand, the learned counsel appearing for the respondent sought to justify the orders passed by the assessing officer, by drawing the attention of this court to the reference column of the same and submitted that in accordance with the order of the learned Judge dated 15.03.2018, notice dated 11.02.2021 came to be issued to the appellant, calling upon them to produce the relevant documentary evidence, but they did not submit any document and thereafter only, the respondent passed the assessment orders dated 21.04.2021 and hence, there is no violation of the principles of natural justice as alleged by the appellant.

12.Such contention raised on the side of the respondent cannot be countenanced by this court. Admittedly, the appellant did not avail the opportunity said to have been provided by the respondent before passing the assessment orders, for want of service of notice dated 11.02.2021. The legal position to be noted at this juncture is that "the opportunity to provide hearing before making any decision is considered to be a basic requirement in Court proceedings" and the observation of the Hon'ble Supreme Court in the decision in Swadeshi Cotton Mills

v. Union of India [(1981) 1 SCC 664] is quoted below for ready reference:

> "Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post- decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre- decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

13.In view of the above, this court, in order to provide an opportunity to the appellant and also sub-serve the interests of justice, sets aside the orders impugned herein as well as in the writ petitions. As a sequitur, the matter is remanded to the assessing officer for passing orders afresh, on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant. The appellant shall file their reply to the notice dated 11.02.2021 along with necessary documentary evidence, within a period of two weeks from the date of receipt of a copy of this order. On filing of such reply, the assessing officer shall consider the same and pass orders, within a period of four weeks thereafter. However, it is made clear that in the event of the failure on the part of the appellant to submit their reply within the time stipulated by this Court, it is open to the Assessing Officer to proceed further and pass a speaking order as per law on the basis of the materials available on his hand.

14.All the writ appeals stand disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

rsh/gba

To

The Assistant Commissioner (ST),
Hosur (South), Hosur
Krishnagiri.

+1cc to Mr.Manoharan Sundaram, Advocate Sr.21830
+1cc to the Special Government Pleader Sr.21886

WA Nos. 312, 315, 316, 317,
318 & 323 of 2022

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srg 13/05/2022