IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.3146, 3148, 3150, 3152, 3153,
3644, 3648, 3649 and 3651 of 2022
and W.M.P.Nos.3305, 3306, 3308, 3310, 3312,
3800, 3801, 3805 and 3808 of 2022

W.P.No.3146 of 2022

Sri Kannan and Co.,
Represented by its Partner
No.5, K.P.R.Thottam
Mangalam Road
Tiruppur – 641 604. …. Petitioner(in all WP's)

-Vs-

The Assistant Commissioner (ST)(FAC)
Tiruppur (Central-1) Circle
Tiruppur. …. Respondent in WP.3146, 3148, 3150, 3152/2022

1.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai.

2.The Assistant Commissioner(ST)(FAC)
Tiruppur(Central-1)Circle,
Tiruppur.

3.The Commercial Tax Officer-I,
Puducherry. ...1 to 3 Respondents
in WP No's.3644, 3651, 3649, 3648/22

Prayer in all W.P: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN No.33602400366/2007-08, quash the assessment order dated 08.12.2021 TIN.NO.33602400366/2008-09, dated 15.01.2021, TIN.NO.33602400366/2009-10, dated 08.12.2021, TIN.NO.33602400366/2010-11 dated 08.12.2021, CST:313641/2009-10 dated 13.10.2021, TIN NO.33602400366/2011-12 dated 08.12.2021, TIN NO.33602400366/2012-13, dated 08.12.2021, TIN NO.33602400366/2013-14, dated 08.12.2021, TIN NO.33602400366/2014-15 dated 08.12.2021 passed therein.

For Petitioner in all WPs: Mr.R.L.Ramani,
Senior Counsel
for Mr.B.Raveendran

For Respondents in all WPs: Mr.Richardson Wilson
Additional Government Pleader

COMMON ORDER

The issue raised in all these writ petitions is one and the same. Hence, with the consent of the learned Senior Counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents, all these writ petitions were taken up together and are disposed of by this common order.

2. That for the Assessment Years 2007-08 to 2009-10 and 2010-11 to 2014-15 and 2013-14 (CST), these assessment orders which are impugned herein are passed under Section 27 of the TNVAT Act, 2006 (In short 'the Act').

3. Assailing the said impugned orders, the learned Senior Counsel appearing for the petitioner, has replied, to a question posed by this Court as to why the petitioner has chosen to file writ petition under Article 226 of the Constitution of India instead of preferring an appeal as against the impugned orders, that the petitioner, on 22.11.2021, has given a detailed reply item-wise raised in the proposal and the reply, since has not been considered or it has not been considered in proper perspective, on that ground it violates the principles of natural justice, as proper consideration is one of the facet of natural justice principles, thereby the right of the petitioner gets prejudiced, the petitioner had chosen to file writ petitions instead of filing appeals before the appellate authority.

4. In this context, the learned Senior Counsel appearing for the petitioner has taken this Court to the detailed reply given by the petitioner dated 22.11.2021, which runs about to nearly 30 pages, and further stated that, though such a long reply item-wise had been given, there has been no consideration of those aspects in the impugned orders and therefore, the orders

impugned are liable to be set aside.

5. Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondents has pointed out that, the main issue is the stock transfer, where the petitioner's goods manufactured at Tamil Nadu had been stock transferred to Pondicherry, from there, instead of making local sales in Pondicherry, they made inter-state sales to the Tamil Nadu buyers. Therefore, it is nothing but a camouflage of 5% tax to be levied otherwise for the local sales if those sales are undertaken in Tamil Nadu itself. This main issue, in fact having been considered, the objections filed by the petitioner in this regard dated 22.11.2021 has been dealt with in proper perspective, he contended.

6. In respect of other aspects also, consideration has been given to each of the heading by the assessing authority, which is reflected in the impugned orders. Therefore, it cannot be stated that, the reply given by the petitioner dated 22.11.2021 has not been considered.

7. However, Mr.P.V.Ramani, learned Senior Counsel appearing for the petitioner would further state that, from 2007-08 to 2014-15 for all these assessment years, since these orders have been passed under Section 27 of the Act in which for each assessment year, the tax due, reversal of Input Tax Credit as well as penalty had been imposed, if the petitioner prefers appeal before the appellate authority, as per the statutory condition, they have to pay 25% of the demand. That apart, after entertaining the appeal, usually in number of cases the appellate authority would issue further conditions for grant of stay of the demand therefore altogether it will go upto 50% of the demand and for all these years it will be a huge sum, which will be an unnecessary burden fastened on the petitioner and therefore, that aspect also can be taken judicial notice by this Court.

8. I have considered the submissions by the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and have perused the materials placed before this Court.

9. Though it was contended by the learned Senior Counsel appearing for the petitioner that, the detailed reply given by the petitioner dated 22.11.2021 has not at all been considered or not been considered in proper perspective by the respondents, on a perusal of the impugned orders, this Court finds that, there has been some consideration in respect of the defence taken by

the petitioner through his reply dated 22.11.2021 item-wise. Therefore, it cannot be stated that the assessing authority has passed the impugned assessment orders without considering the reply given by the petitioner dated 22.11.2021, as the said reply has been cited as Reference No.6 in the impugned orders itself and the main issue of stock transfer has also been considered by the respondents in the impugned orders.

10. Therefore, these are all not the cases to be considered as cases where the assessment orders are passed by the assessing authority without giving any proper opportunity to the petitioner by thus following the principles of natural justice. Instead, these are all the cases where there has been consideration on the part of the respondents. However, on factual matrix whether the consideration is not enough to be accepted by the petitioner that it has been a proper consideration by meeting each and every fine and minute detail of the factual matrix, that aspect necessarily has to be gone into by the appellate authority and not by this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

11. Insofar as the apprehension raised by the learned Senior Counsel that, apart from 25% statutory condition of payment of the demand, there may be some further condition for payment of another 25% or like sum for pressing the stay petition to be filed in this regard by the petitioner is concerned, this Court in similar circumstances, in similar cases, had given a direction by putting a cap to the appellate authority that, except the statutory payment of 25% of the demand, no further conditional order shall be passed during the pendency of the appeal and this Court also has fixed an outer time limit to dispose of the appeal. This Court therefore feels that the same yardstick can be adopted in these cases also by driving the petitioner to the appellate authority to file an appeal against the impugned assessment orders.

12. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order.

- That the impugned orders, for the reasons stated in the affidavit, and the arguments advanced by the learned Senior Counsel as discussed above, are not liable to be interfered with at this stage. Therefore, these writ petitions fail and they are liable to be dismissed.
- As a sequel, it is open to the petitioner to file

appeal against the impugned orders before the appellate authority, and at the time of filing the appeal, it goes without saying that, the petitioner shall comply with the statutory payment of 25% of the demand for entertaining the appeal by the appellate authority.

- At the same time, after entertaining of the appeal by the appellate authority, there shall not be any further condition imposed by the appellate authority during the pendency of the appeal in making further payment of the demand for consideration of stay, if any sought for by the petitioner.
- Anyhow, once the appellate authority entertains the appeal, he shall make endeavour to decide the same with the fullest cooperation of the petitioner, within a period of three months from the date of entertaining the appeal and pass orders finally on merits and in accordance with law.

13. With the above observations and directions, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

KST

To

1.The Assistant Commissioner (ST)(FAC),
Tiruppur (Central-1) Circle, Tiruppur.

2.The State of Tamilnadu,
Rep by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai.

3.The Commercial Tax Officer-I,
Puducherry.

+1cc to Mr.B.Raveendran, Advocate SR.No.11811
+1cc to Special Government Pleader(Taxes), SR.No.12489

W.P.Nos.3146, 3148, 3150, 3152, 3153,
3644, 3648, 3649 and 3651 of 2022

GMR(CO)
CB(07/03/2022)