IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.4943 & 4944 of 2022
and
W.M.P.Nos.5088 & 5089 of 2022

Thiru M.Sudamani ... Petitioner in both WPs

Vs

The State Tax Officer,
Harur Assessment Circle,
Harur. ... Respondent in both WPs

Common Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33823341727/2014-15 and TIN:33823341727/2015-16 dated 31.08.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
(in both WPs)

For Respondent : Mr.V.Prasanth Kiran
(in both WPs) Government Advocate

COMMON ORDER

These writ petitions are relating to the Assessment Years 2014-15 and 2015-16. These two Writ Petitions have been filed by the same petitioner. Therefore, with the consent of learned counsel appearing for both sides, these writ petitions were heard together and are being disposed of by this common order.

2. That the petitioner is the assessee/dealer under the respondent. Insofar the Assessment Years 2014-15 and 2015-16, under the erstwhile Tamil Nadu Value Added Tax, 2006 (in short 'the TNVAT Act'), there had been a deemed assessment under

Section 22(4) of the TNVAT Act. Subsequently, since, according to the Revenue, there has been an escaped assessment, they issued proceedings under Section 27 of the TNVAT Act and accordingly, notice was issued twice, where, there has been a mismatching to the extent of Rs.5,55,960/- and Rs.3,73,704/- respectively. Though the notices had been sent to the petitioner/dealer, the petitioner has not chosen to file reply to those notices.

3. Ultimately, an order of assessment has been passed by order dated 31.08.2021 for both Assessment Years. Challenging the same, the present writ petitions have been filed.

4.Mr.R.Senniappan, learned counsel appearing for the petitioner, would submit that, at that time, there was an issue with regard to calculation of mismatching and how that should be dealt with in Section 27 proceedings, where, writ petitions were filed before this Court and the said issue was pending before this Court. Ultimately, orders were passed in those writ petitions, pursuant to which, a Circular has been issued by the office of the Principal Secretary/Commissioner of Commercial Taxes, Chennai dated 24.02.2021, where, the broad category of mismatching cases have been dealt with and the possible reasons for the mismatching report, procedure to be followed in the cases of mismatching etc., had been given in detail, as to how these issues have to be dealt with by the Revenue.

5. In view of these developments, expecting a finality in this issue, according to the learned counsel for the petitioner, the petitioner could not file reply, even though notices had been issued. Now, the issue has been clarified by the Circular. Therefore, based on the circular, whatever the issue, which has been concluded, has to be re-visited insofar as mismatching cases are concerned and that is underlined in the judgment of this Court in the case of M/s.Sri Kumar Hardwares Vs. The Commissioner of Commercial Taxes & another made in W.P.No.929 of 2021 dated 26.11.2021. Relying upon the said judgment, learned counsel for the petitioner would submit that, the learned Judge after having extracted the said Circular dated 24.02.2021, passed the following orders :

> "3.Since the issue will have to be now revisited in the light of the above circular, the impugned order passed by the first respondent stands quashed and the case is remitted back to the second respondent to pass

appropriate orders in the light of the above circular within a period of 30 days from the date of receipt of copy of this order. Needless to state before passing any order by the respondent in accordance with law, the petitioner shall also be heard.

This writ petition stands disposed of with the above observations and consequently connected writ miscellaneous petitions are also closed. There shall be no order as to costs.”

6. Therefore, relying upon this decision as well as the Circular and the said developments stated above, learned counsel for the petitioner seeks indulgence of this Court against the impugned order for remitting the matter back to the respondent for re-consideration by giving an opportunity of being heard to the petitioner in respect of the petitioner's case with regard to the alleged mismatch stated by the respondent/Revenue in the show cause notice, which is now confirmed through the impugned order.

7.Per contra, Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondent would submit that, it is not the first time show cause notice was given, atleast three times show cause notices were given and each time, having receipt of the same, the petitioner has not chosen to reply.

8. If at all, the petitioner had any substantial materials to put forth in support of the defense or the case of the petitioner, he could have responded to those notices. Therefore, it cannot be stated that, no opportunity was given to the petitioner before passing the order of assessment under Section 27 of the TNVAT Act.

9.The learned Government Advocate appearing for the respondent would also submit that, merely because some writ petitions have been filed, which were pending before this Court, the petitioner cannot take a defense that, awaiting the orders to be passed by this Court in the pending writ petitions, he could not make the reply.

10. In fact, the petitioner has not filed any writ petition. Therefore, the said reasons stated by the petitioner cannot be accepted. Hence, the learned Government Advocate seeks indulgence of this Court to reject this writ petition, directing the petitioner to prefer an appeal against the impugned order, where, whatever the case on merits, the petitioner wants to put

forth, can be made for the consideration of the Appellate Authority, he contended.

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

12.It is no doubt, notices have been given to the petitioner more than one occasion and the notices admittedly have not been responded by the petitioner.

13.For such action on the part of the petitioner in not responding to the notices, the reason stated by the petitioner is that, the issue with regard to the mismatching was pending before this Court and after getting an order from this Court, a Circular was issued by the Revenue on 24.02.2021, where, such guidelines have been given. Therefore, if those guidelines are applied to the case of the petitioner, the notices referred to, cannot be stated as full-fledged notices inconsonance with the said Circular.

14.Be that as it may. Now the final order has been passed, where, though notices have already been given, the petitioner could not appear and give reply, for which, the reasons stated by the petitioner is that, the issue was pending before this Court and consequently, a Circular was issued.

15.In view of the aforestated development and by taking into account the earlier order passed by this Court on the similar issue in W.P.No.929 of 2021, referred to above in the case of M/s.Sri Kumar Hardwares Vs. The Commissioner of Commercial Taxes & another, where, the learned Judge directed the respondent/Revenue to re-visit the issue on the basis of the Circular dated 24.02.2021, I am inclined to follow the same and accordingly, these writ petitions are disposed of with the following orders :

> (i) That the impugned orders are set aside and the matters are remitted back to the respondent for re-consideration.
>
> (ii) While re-considering the same, taking into account of the Circular dated 24.02.2021, a fresh show cause notice be given to the petitioner, fixing a particular date, on or before the petitioner shall give his reply with necessary documents and a date also can be mentioned with

regard to the personal hearing. On that date, the petitioner without fail, shall appear before the respondent and put forth his case.

(iii) Thereafter, it is open to the respondent to pass final orders.

(iv) It is made clear that, except the one opportunity, which is going to be given as indicated above, no further opportunity would be given to the petitioner under any circumstances. Therefore, that should be utilized without fail by the petitioner.

16.With these observations and directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sp/kak

To

The State Tax Officer,
Harur Assessment Circle,
Harur.

+1cc to Mr.R.Senniappan, Advocate Sr.15281
+1cc to the Special Government Pleader Sr.14800

W.P.Nos.4943 & 4944 of 2022

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srg 08/06/2022