IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.6819, 6820, 6823, 6829, 6830 & 6832 of 2022
and
W.M.P.Nos.6886, 6888, 6891, 6894, 6898 & 6899 of 2022

M/s.My Electronics,
Rep by its Proprietor Mr.M.Sakthivel
...Petitioner in all W.P's

-Vs-

The State Tax Officer,
Gudiyatham Assessment Circle (East),
Gudiyatham.
...Respondent in all W.P's

Prayer in W.P.No.6819 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN.No.33794242922/2010-11 dated 05.01.2022, quash the same and further direct the respondent to follow the Circular.No.5 of 2021 dated 24.02.2021 and furnish the copy of the records relied on for the purpose of revision of assessment and thereafter grant an opportunity of being heard by fixing a date, place and time of hearing as directed by this Court in the case of the petitioner themselves in W.P.Nos.275-279 of 2017 dated 05.01.2017 thereafter pass order in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.6820 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN.No.33794242922/2011-12 dated 05.01.2022, quash the same and further direct the respondent to follow the Circular.No.5 of 2021 dated 24.02.2021 and furnish the copy of the records relied on for the purpose of revision of assessment and thereafter grant an opportunity of being heard by fixing a date, place and time of hearing as directed by this Court in the case of the petitioner themselves in W.P.Nos.275-279 of 2017 dated 05.01.2017 thereafter pass order in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.6823 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN.No.33794242922/2012-13 dated 05.01.2022, quash the same and further direct the respondent to follow the Circular.No.5 of 2021 dated 24.02.2021 and furnish the copy of the records relied on for the purpose of revision of assessment and thereafter grant an opportunity of being heard by fixing a date, place and time of hearing as directed by this Court in the case of the petitioner themselves in W.P.Nos.275-279 of 2017 dated 05.01.2017 thereafter pass order in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.6829 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN.No.33794242922/2013-14 dated 05.01.2022, quash the same and further direct the respondent to follow the Circular.No.5 of 2021 dated 24.02.2021 and furnish the copy of the records relied on for the purpose of revision of assessment and thereafter grant an opportunity of being heard by fixing a date, place and time of hearing as directed by this Court in the case of the petitioner themselves in W.P.Nos.275-279 of 2017 dated 05.01.2017 thereafter pass order in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.6830 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN.No.33794242922/2014-15 dated 05.01.2022, quash the same and further direct the respondent to follow the Circular.No.5 of 2021 dated 24.02.2021 and furnish the copy of the records relied on for the purpose of revision of assessment and thereafter grant an opportunity of being heard by fixing a date, place and time of hearing as directed by this Court in the case of the petitioner themselves in W.P.Nos.275-279 of 2017 dated 05.01.2017 thereafter pass order in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.6832 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN.No.33794242922/2015-16 dated 05.01.2022, quash the same and further direct the respondent to follow the Circular.No.5 of 2021 dated 24.02.2021 and furnish the copy of the records relied on for the purpose of revision of assessment and thereafter grant an opportunity of being heard by fixing a date, place and time of hearing as directed by this Court in the case of the petitioner themselves in W.P.Nos.275-279 of 2017 dated 05.01.2017 thereafter pass order in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

In all W.P's

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.V.Prasanth Kiran, Government Advocate

COMMON O R D E R

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

2. The petitioner is a dealer under the erstwhile TNVAT Act, 2006 (In short 'the Act'). For the Assessment Years 2010-11 to 2015-16 there was revised assessment order by order dated 14.10.2016. Aggrieved over the same, the said revised orders of assessment were under challenge before this Court in the first round of litigation in W.P.No.275 to 279 of 2017 in the matter of M/s.My Electronics Vs. Commercial Tax Officer, Gudiyatham Assessment Circle, Gudiyatham, Vellore District.

3. A Learned Judge of this Court, by order dated 05.01.2017, having considered the merits of the case was pleased to set aside those revised orders of assessment and remitted the matter back to the respondent for reconsideration. While reconsidering the same as per the direction of the learned Judge, the Respondent Revenue shall furnish the requisite information and details, based on which he proposes to assess the petitioner, based on the allegation that there has been a purported suppression of sales, then, only after giving an opportunity to the petitioner to file objection, final orders can be passed.

4. Thereafter notices seems to have been given, reply had also been given by the petitioner/dealer and pursuant to which now on 05.01.2022 uniformly for all these years, revised order of assessment have been passed confirming the proposal already made with regard to the alleged suppression of sales and aggrieved over the present orders dated 05.01.2022 in all these cases, the petitioner has chosen to file these Writ Petitions with the respective prayer.

5. Heard the learned counsel for the petitioner who would point out that, though a clearcut direction was given by this Court in the earlier round of litigation by order dated 05.01.2017 to supply the requisite information and details to the petitioner and to give an opportunity with regard to the

objection to be made against such supply of requisite information, now the impugned order has been passed without supplying those materials or information. Thereby it is a clear violation of the direction given by this Court and it also amounts to violation of principles of natural justice, and therefore on that ground itself the petitioner is entitled to have successful challenge against the impugned orders and therefore he seeks indulgence of this Court against the impugned order.

6. The learned Government Advocate appearing for the respondent however, would submit that, already there has been notices and replies between the Revenue and the petitioner as has been referred in the reference column in the impugned order itself where, details as to the information from the sellers of the petitioner had been given in detail and therefore it cannot be stated that the Revenue has not supplied the requisite information. Therefore on that ground, the petitioner cannot challenge the impugned orders and the learned Government Advocate further submitted that, if at all the petitioner is aggrieved over the orders of assessment which are impugned herein, as against which he can very well prefer an appeal, without which, these Writ Petitions since have been filed by the petitioner, the same cannot be entertained, he contended.

7. I have considered the said rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent and have perused the materials placed before this Court.

8. In the order dated 05.01.2017, the learned Judge has passed the following orders:

> "8.1. Furthermore, the petitioner's submission that, no material was provided, also appears to be correct. The respondent's approach, quite clearly, is contrary to the ratio of the aforementioned judgments of this Court.
>
> 9. Therefore, the impugned orders are set aside. The respondent is, however, given liberty to redo the assessments. Before proceeding to pass fresh order of assessments, the respondent will serve written notice, calling upon the petitioner to appear before him. Along with the notice, the respondent, will, supply requisite information and details, based on which he proposes to assess the petitioner, based on the allegation that there has been a purported suppression of sales.
>
> 9.1. The petitioner will be given an opportunity to file fresh objections, based on the information to be

> supplied by the respondent. It is only, thereafter, that the matter will be heard and decided by the respondent.
>
> 10. The captioned Writ Petitions are disposed of in the aforementioned terms. However, there shall be no order as to cost. Consequently, connected Miscellaneous Petitions are closed.”

9. While setting aside the earlier impugned orders and remanding the matter back to the Respondent Revenue, such direction was given by the learned Judge as quoted herein above, where, it was mandated that the requisite information and details to be supplied by the Respondent Revenue to the petitioner, based on which only the Revenue proposes to assess the petitioner, based on the allegation that there has been a purported suppression of sales.

10. After supplying those requisite information and details, giving an opportunity to file fresh objections by the petitioner, then only the final orders should have been passed.

11. However, on perusal of the impugned orders including the reference column, this Court finds that no such information had been supplied prior to the passing of the impugned orders.

12. Though it was pointed out by the learned Government Advocate appearing for the Respondent Revenue that in the orders itself which are impugned herein, the details of the various sellers of the petitioner had been given as to how there has been a sales suppression, however, these informations and details have not been given prior to the passing of the impugned orders. Therefore, the argument advanced by the learned counsel for the petitioner is to be accepted as there has been a violation of the direction given by this Court in the earlier order dated 05.01.2017.

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

- That the impugned orders are set aside and the matters are remanded back to the Respondent Revenue for reconsideration and while reconsidering the same, the petitioner shall be given an opportunity to make his objections by treating the impugned orders dated 05.01.2022, as show cause notices and whatever information or details which have been shown or stated in the impugned orders can be taken as the details and information sought for to be supplied to the petitioner/dealer.

- Accordingly, it is open to the petitioner to make a reply or objection within the time frame stipulated in this regard and thereafter, the assessing authority, after giving an opportunity of hearing, shall pass final assessment orders on merits and in accordance with law.

14. With these directions and observations, these Writ Petitions are disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

Anu/KST

To
The State Tax Officer,
Gudiyatham Assessment Circle (East),
Gudiyatham.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.20541
+1cc to the Special Government Pleader(Taxes), S.R.No.21476

W.P.Nos.6819, 6820, 6823,
6829, 6830 & 6832 of 2022

PMK[co]
NSK/10/06/2022