IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.6679, 6682 and 6683 of 2022
and
W.M.P.Nos.6760, 6762 and 6767 of 2022

M/s.New Venus Builders and Promoters Pvt Ltd
Rep.by its Managing Director, No.19
Thacker Street, Purasawalkam,
Chennai 600 084. ...Petitioner in all W.Ps

-Vs-

The Assistant Commissioner (ST)
Purasawalkam Assessment Circle
Chennai 600 108. ...Respondents in all W.Ps

Prayer in W.P.6679 of 2022 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in Rc.892 / 2007- 08 / A4 / 2021 TIN 33410483217 / 2007 -08 dated 03.02.2022 and to quash the order passed therein and to direct the respondent to pass revised orders without being influenced by the proposals and directions of the Enforcement wing authorities but based on the monthly returns filed for the year 2007 - 08 by levying taxes under Section 5 of TNVAT Act and direct the respondent to pass fresh orders for the year 2007 - 08 by considering reply letter filed on 06.12.2021 after providing an opportunity of personal hearing.

Prayer in W.P.6682 of 2022 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in Rc.892 / 2007- 08 / A4 / 2021 TIN 33410483217 / 2008 -09 dated 03.02.2022 and to quash the order passed therein and to direct the respondent to pass revised orders without being influenced by the proposals and directions of the Enforcement wing authorities but based on the monthly returns filed for the year 2008-09 by levying taxes under Section 5 of TNVAT Act and direct the respondent to pass fresh orders for the year 2008-09 by considering reply letter filed on 06.12.2021 after providing an opportunity of personal hearing.

Prayer in W.P.6683 of 2022 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in Rc.892 / 2007- 08 / A4 / 2021 TIN 33410483217 / 2009-10 dated 03.02.2022 and to quash the order passed therein and to direct the respondent to pass revised orders without being influenced by the proposals and directions of the Enforcement wing authorities but based on the monthly returns filed for the year 2009-10 by levying taxes under Section 5 of TNVAT Act and direct the respondent to pass fresh orders for the year 2009-10 by considering reply letter filed on 06.12.2021 after providing an opportunity of personal hearing.

In all W.Ps.

For Petitioner	:	Mr.C.Baktha Siromani
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of the learned counsel appearing on either side, both the writ petitions were heard together and disposed of by this common order.

2. The petitioner is a dealer under the erstwhile TNVAT Act (In short 'the Act'). For the Assessment Years 2007-08, 2008-09 and 2009-10, assessment had already been made including imposition of penalty under Section 22(5) of the Act as against which the petitioner had already filed writ petitions before this Court, where orders had been passed directing the petitioner to raise those grounds by approaching the appellate authority. According to the petitioner dealer, he had approached the appellate authority raising the grounds raised before this Court and since the same has been rejected, challenging the orders of assessment these writ petitions are filed.

3. The appellate authority, after considering the grounds raised by the petitioner, having set aside the assessment order, remanded the matter back to the assessing officer with the following four directions / instructions.

i. Opportunity of personal hearing has to be given after issue of appropriate notice.
ii. Details of Section 12 purchase and tax liability claimed by the dealer to be

examined.

iii. Details regarding the deemed sales turnover falling under TNGST and TNVAT periods of assessment year to be examined.

iv. The dealers are requested to produce all relevant material in its possession to establish the claims before the Assessing Authority."

4. Pursuant to which, notice had been given by the assessing authority to the petitioner to give reply or defence which the petitioner had complied with. Thereafter further notice had been given for personal hearing also which was also used or utilised by the petitioner. Thereafter, based on the reply / input given by the petitioner, having considered the same in detail, the present assessment orders have been passed on 03.02.2022 where the proposal of assessment of tax was made as follows in respect of each of the assessment year.

Assessment Year	Tax Due (In Rs.)	Tax Paid (In Rs.)	Balance Tax Due (In Rs.)	Penalty (In Rs.)
2007-08	21,15,961	5,15,273	16,00,688	31,73,942
2008-09	36,68,338	6,97,368	29,70,970	55,02,507
2009-10	26,08,400	7,13,481	18,94,919	39,12,600

5. Therefore, the tax balance as well as the penalty has now been shown as due payable by the petitioner for which notice in Form-RR also had been issued. Therefore, challenging the said assessment orders dated 03.02.2022 the present writ petitions have been filed.

6. Heard Mr.C.Baktha Siromani learned counsel for the petitioner who would submit that, insofar as the assessment is concerned, what has been directed by the appellate authority ie., the four points mentioned above has not been properly considered by the assessing authority and therefore it is a violation of principles of natural justice. He would also contend that, insofar as the imposition of penalty ie., 150% as per the assessment order, there was absolutely no proposal in the notice issued in this regard and therefore, without having issued a notice for penalty, the same since has now been imposed, that is also bad in law. Therefore, the learned counsel for the petitioner wants to assail the impugned assessment orders before this Court in the present writ petitions.

7. Heard Mr.Prashanth Kiran, learned Government Advocate, who would submit that as against the impugned assessment orders, the

petitioner can very well prefer an appeal before the appellate authority and the points raised in this writ petition can very well be urged before the appellate authority.

8.Insofar as the violation of principles of natural justice is concerned, absolutely there has been no such violation on the part of the Revenue, as notice had been given and reply was given by the petitioner. Thereafter, after giving an opportunity of personal hearing, the present impugned orders have bee passed, where each and every defence taken by the petitioner or reply given by him has been exhaustively considered, which is reflected in the impugned orders. Therefore, the question of violation of principles of natural justice, at any rate, does not arise in these cases and therefore on that ground, the petitioner cannot successfully challenge the impugned orders.

9.I have heard the rival submissions made by the learned counsel appearing for both the parties and have perused the materials placed on record.

10.Insofar as the challenge made against the impugned orders before this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is concerned, there are only three circumstances under which writ petitions can be entertained, one is that there must be violation of principles of natural justice, secondly there must be statutory violation of provision or statute and third one is the officer or authority who passes an order has no jurisdiction to pass such an order.

11.Here in the case, none of the three grounds set out above are available to the petitioner to invoke the extraordinary jurisdiction of this Court because there is no violation of principles of natural justice, no statutory violation and the authority who has passed the order is not to be treated as person who lacks jurisdiction. Therefore, since none of those grounds is available, on those grounds the petitioner cannot challenge the impugned orders except to go before the appellate authority.

12.Insofar as the imposition of penalty is concerned, even though that ground is urged that, it did not figure in the show cause notice followed by the impugned order, even that issue also can very well be canvassed before the appellate authority by the petitioner and if at all that issue is raised, the same shall be considered and decided separately.

13.In that view of the matter, this Court is inclined to pass the following order in this writ petition.

- The writ petitions are dismissed on the ground of availability of effective alternative remedy, which is very efficacious also. No costs. Consequently, connected miscellaneous petitions are also dismissed.

- However, the dismissal of these writ petitions shall not preclude the petitioner from preferring an appeal before the appellate authority against the impugned orders.

- Registry is directed to return the original impugned orders after retaining a photocopy of the same and getting due acknowledgement from the counsel on record.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

KST

To

The Assistant Commissioner (ST)
Purasawalkam Assessment Circle
Chennai 600 108.

Copy To

The Section Officer,
E.R. Section,
High Court
Madras.

+4cc to M/s.C.Baktha Siromoni, Advocate, S.R.No.25888

+1cc to the M/s.Special Government Pleader, (Taxes)
High Court, Madras, S.R.No.25822

W.P.Nos.6679, 6682 and 6683 of 2022

SJ(CO)
RGA(22/06/2022)