IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.9997, 10001 & 10004 of 2022
and
W.M.P.Nos.9705, 9706, 9707, 9708, 9711 & 9712 of 2022

M/s.Infinity Metal Private Limited,
Rep.by its Director – Syed Mahammad Vali
No.3, GNT Road,
Gummidipoondi – 601 201.
Tiruvallur District. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (ST),
Gummidipoondi Assessment Circle,
Room No.112, 1st Floor, Integrated
Commercial Taxes Building,
Wall Tax Road,
Chennai – 600 003. ... Respondent in all W.Ps

PRAYER in W.P.No.9997 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in its proceedings made in TIN/ 33081702931/ 2011-12 dated 16.07.2021 quash the same which is contrary to the provisions of Section 19(10) (a) of TNVAT Act 2006 and Rule 10(2) of TNVAT Rules, 2007.

PRAYER in W.P.No.10001 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in its proceedings made in TIN/33081702931/2012-13 dated 16.07.2021 quash the same which is contrary to the provisions of Section 19(10) (a) of TNVAT Act, 2006 and Rule 10(2) of TNVAT Rules, 2007.

PRAYER in W.P.No.10004 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in its proceedings made in TIN/33081702931/2013-14 dated 02.08.2021, quash the same which is contrary to the provisions of Section 19(10) (a) of TNVAT Act, 2006 and Rule 10(2) of TNVAT Rules, 2007.

For Petitioner	: Mr.S.Rajasekar [in all W.Ps]
For Respondent	: Mr.C.Harsha Raj Additional Government Pleader [in all W.Ps]

COMMON ORDER

Since the issue raised in these writ petitions is common, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. The petitioner is a dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 [in short, 'TNVAT Act'] and for the Assessment Year 2011-12, 2012-13 and 2013-14, notices were issued for revising the assessment. In respect of the said notices, the petitioner could not give the reply in time given by the Revenue. Therefore, the Revenue proceeded to pass orders dated 16.07.2021 and 02.08.2021, confirming the proposal.

3. Challenging these orders, the present writ petitions have been filed.

4. Heard Mr.S.Rajasekar, learned counsel for the petitioner, who would submit that, in respect of the Assessment Years 2006-07 and 2007-08, on the same ground, when similar orders were challenged in W.P.Nos.9612 & 9616 of 2022, filed by the same assessee/dealer, this Court by order dated 21.04.2022, had set aside the impugned orders therein and remitted the matter back to the Assessing Authority, giving only two weeks time to the petitioner to give reply with documents and thereafter, the Revenue was directed to pass orders. These three writ

petitions are in the same line, where, orders were passed. Therefore, if one more opportunity in these cases is also given to the petitioner/dealer, that would suffice, he contended.

5. Heard, Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent, who would submit that, though an opportunity had been given to the petitioner, that has not been properly utilized and no reply or documents since had been filed, the respondent has no other option except to proceed with the option. Accordingly, assessment orders impugned herein have been passed, he contended.

6. I have considered the said rival submissions made by the learned counsel appearing on both sides and have perused the materials placed before this Court.

7. In the earlier order dated 21.04.2022 in W.P.Nos.9612 & 9616 of 2022, I have passed the following orders:

> "*Since the issue raised in both these writ petitions is common, with the consent of the learned counsel on either side, these writ petitions are taken up together, heard and*

disposed of by this common order.

2. The petitioner was a dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (In short 'the Act'). In respect of the Assessment Years 2006-07 and 2007-08, assessment orders were passed on 07.06.2014. Those orders were under challenge in Writ Petitions before this Court in W.P.No.17653 of 2014 etc., batch. The learned Judge of this Court, who disposed of those writ petitions by order dated 04.07.2014, having set aside the impugned orders therein, remitted the matter back to the respondent Revenue / Assessing Authority to reconsider the same by giving an opportunity of being heard to the petitioner.

3. Pursuant to the said remand order, notice had been issued by the Revenue to the petitioner sometime in February 2021. The petitioner having receipt of the same, had sought for further time of one month to produce the relevant records as sought for by the Revenue because, those old records pertaining to the Assessment Years 2006-07 and 2007-08 could not be retrieved immediately and therefore a breathing time of one month is required, within which they will cull out those records.

4. Accordingly, one month time was given to the petitioner by the Revenue. Subsequently, a reminder for personal hearing intimation was also given by the Revenue on 23.03.2021 and the personal hearing was posted on 30.03.2021 and the final notice was issued to the dealer from *the office of the Revenue on 22.04.2021 to file their reply with relevant particulars and documents, which was also served on the petitioner on 07.06.2021 by RPAD and despite this notice and time as sought for by the assessee having been given, the assessee has not come forward to file those documents. Therefore, the Revenue proceeded to complete the assessment by confirming the earlier assessment order dated 07.06.2014 through the orders dated 16.07.2021, which are impugned herein.*

5. Heard Mr.S.Rajasekar, learned counsel for the petitioner, who would submit that, apart from other issues with regard to the merits and jurisdiction, he insists upon that, due to COVID-19 pandemic situation the old records pertaining to the Assessment Years 2006-07 and 2007-08 could not be retrieved or culled out immediately to produce the same before the Revenue within the thirty days time sought for. However, subsequently those documents were retrieved and are ready for production before the Revenue. In the meanwhile since the impugned orders have been passed, they could not do the same and therefore they challenged the same seeking for one more opportunity from the Revenue to produce those old records.

6. It is further submitted by the learned counsel for the petitioner that, in respect of those documents which are all essential to be kept by any dealer prior to 2016 are readily available with the petitioner except the transport documents which are supposed to be kept ready by every *dealer only after the amendment made in the year 2016. It has also been declared to have retrospective effect only by orders of the Division Bench of this Court. Therefore, except those transport documents, all other relevant documents which are supposed to be produced before the Revenue since are readily available with the petitioner dealer, if one more chance is given by fixing a date, within the time or date fixed by this Court, the petitioner is ready and willing to produce those documents.*

7. On the other hand, Mr.R.Siddharth, the learned Government Advocate appearing for the Revenue would contend that, after the earlier remand order several opportunities were given to the petitioner assessee and final opportunity of 30 days as sought for by the dealer also had been given and thereafter further final notice during the Pandemic period was sent by the Revenue, which was also received by the petitioner. Despite these notices, the petitioner having received the same, has not responded. Therefore, the Revenue proceeded to confirm the earlier order dated 07.06.2014. Hence, the impugned orders are to be sustained, he contended.

8. I have considered the submissions made by the learned counsel appearing for both sides and have perused the materials placed on record.

9. That insofar as the production of documents are concerned, no doubt they are old documents pertaining to *the assessment years 2006-07 and 2007-08. Therefore, a reasonable time was sought for by the petitioner ie., one month, which was also given by the Revenue. However, during the second and third wave of COVID-19 pandemic period, the petitioner seems to have not culled out or retrieved those old documents, which are nearly about 15 years old. Therefore, only after passing of the impugned orders, the petitioner now, through the learned counsel for the petitioner, submits that, the relevant records and documents now have been retrieved, which are in possession of the petitioner and the same would be produced before the Revenue.*

10. If that being so, the purpose of remitting back the matter to the Revenue by the earlier orders of this Court to give such an opportunity to the petitioner to produce such documents so that the plea raised by the petitioner whether is substantiated or not can be verified. Therefore, in order to fulfill the obligation on the part of the Revenue, as per the earlier remand order made by this Court in the earlier round of litigation, this Court feels that the impugned orders can be set aside and the matters can be once again remitted back to the Revenue for reconsideration for the only purpose of production of available records within the time frame.

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

- *That the impugned orders dated 16.07.2021 are set* *aside and the matters are remitted back to the respondents for reconsideration.*

- *During the reconsideration process, two weeks time fixing a date for personal hearing can be given or issued by a specific notice to be served on the petitioner calling for the petitioner to produce all relevant documents.*
- *On that date to be fixed by the Revenue, the petitioner dealer shall appear and produce all those documents, and considering the same, final orders of assessment can be passed thereafter.*
- *It is made clear that, the legal position with regard to the requirement of transport documents prior to the year 2016 as per the law declared by this Court can be taken into account, and it shall be borne in mind while making the reassessment process as directed above,*

12. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

8. Since the facts are same in these cases, the said relief given to the same petitioner/dealer in respect of the other Assessment Years covered under the said two writ petitions, can be extended to the present petitions also. Accordingly, there shall be an order to the following effect:

- That the impugned orders dated 16.07.2021 and 02.08.2021 are set aside and the matters are remitted back to the respondent for reconsideration.

- During the reconsideration process, two weeks time, fixing a date for personal hearing can be given or issued by a specific notice to be served on the petitioner calling for the petitioner to produce all relevant documents.

- On that date to be fixed by the Revenue, the petitioner/dealer shall appear and produce all those documents, and considering the same, final orders of assessment can be passed thereafter.

- It is made clear that, the legal position with regard to the requirement of transport documents prior to the year 2016 as per the law declared by this Court can be taken into account, and it shall be borne in mind while making the reassessment process as directed above.

9. With the above directions, these writ petitions are disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

25.04.2022

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Index : Yes / No
Speaking order : Yes / No

To
The Assistant Commissioner (ST),
Gummidipoondi Assessment Circle,
Room No.112, 1st Floor, Integrated
Commercial Taxes Building,
Wall Tax Road,
Chennai – 600 003.

R. SURESH KUMAR, J.

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