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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.11238, 11240, 11243, 11246, 11250 and 11253 of 2019
and WMP Nos.11604, 11607, 11608, 11611, 11614 and 11615 of 2019

Tvl. Yedakadu Tea Manufacturing Company Pvt. Ltd.,
represented by its Managing Director,
K.Sadhiq
No.103-A, Yedakadu, Mukkimalai,
The Nilgiris - 643 219.

.... Petitioner in the above W.Ps

Vs.

The State Tax Officer
Uthagai South.

.... Respondent in the above W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent in CST.348588/2007-08, 2009-10, 2011-12, 2013-14 2014-15 dated 04.03.2019 and Tin No.33132600784/2014-15 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

In the above W.Ps
For Petitioner : Mr.R.Senniappan

For Respondents: Mr.C.Harsha Raj
Additional Government Pleader

C O M M O N O R D E R

The petitioner challenges orders of assessment passed under the provisions of the Central Sales Tax Act, 1956 for the periods 2007-08, 2009-10, 2011-12, 2013-14 and 2014-15 and also under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the period 2014-15, all dated 04.03.2019.



2. The petitioner is a dealer and assails the assessments on several grounds including specifically that no opportunity was granted to it prior to framing of the impugned assessments. Admittedly, the assessments have been made based upon the returns filed by third party dealers as reflected in the website of the Commercial Taxes Department. Inter alia, the respondent has also obtained and utilised the data from check-posts as well as other connected records pertaining to other dealers.

3. The above third party material that the respondent proposes to use, adverse to the interests of the petitioner, have been referred to in the pre-assessment notices dated 23.03.2018 that have been issued prior to framing of the impugned assessments.

4. The petitioner has responded to the notices objecting to the proposed conclusion of the Assessing Authority to the effect that the third party material in possession of the Department including the Enforcement officials indicate escapement of turnover/tax in its returns of income. The petitioner also sought the particulars relied upon by the authority, which, admittedly, have not been supplied to it.

5. In the impugned assessments, the Assessing Authority merely proceeds to confirm the proposals in the show cause notices denying the exemption claimed by the petitioner on the ground that no proof has been supplied by it in support of its claim. In denying the petitioner's claim, substantial reliance has been placed upon the details culled from the check posts as well as other materials in his possession.

6. The impugned assessments thus been, admittedly, been framed on the basis of mismatch of details as per the petitioner's returns as compared with the details obtained from the returns of the selling/purchasing third party dealers.

7. The issue of mismatch has long plagued assesseees and the Commercial Taxes Department and as early as in 2018, pursuant to several decisions of this Court, the Special Commissioner/Commissioner of Commercial Taxes had directed the Assessing Authorities to keep assessments relating to mismatch of particulars in abeyance till a proper and appropriate scheme be formulated for addressing this issue.

8. On 24.02.2021, a Circular has been issued bearing No.5/2021, wherein, the Principal Secretary/Commissioner, Commercial Taxes has dealt with this issue in extenso. The entirety of the Circular is extracted hereunder:



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"Circular No.5/2021
LW10/12521/2016

Office of the Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.
dated: 24.02.2021

Circular

Sub:	TNVAT Act 2006 - Assessment made on the basis of computed generated mis-match report - Hon'ble Court direction in the case of JKM Graphics - Procedure to deal with such cases - circular issued - Regarding.
Ref:	1. The orders of the Hon'ble High Court in W.P.No.105/2016 dated 01.03.2017. 2. The orders of the Hon'ble High Court in Review Petition No.173 of 2018 in W.P.No.5007 of 2016 dated 12.02.2021.

The Hon'ble High Court of Madras in a batch of cases involving in denial of input tax credit or arising of tax liability due to purchase and sales suppression on the basis of the computer generated mismatch report from the Annexure and II of the returns of the purchaser vis-a-vis seller, has directed that the Commissioner of Commercial Taxes to evolve / devise a mechanism / procedure to exclusively deal with such cases (herein after called as mis-match) in a holistic manner and thus resolve / enable resolution of all such issues under TNVAT Act in its order 1 cited.

2. A review was filed against the orders of the Hon'ble High Court to devise the procedure to reconcile the mismatch. The Hon'ble High Court has dismissed the review application in its order 2 cited with a direction to take earnest steps to resolve the mismatch issue and also directed to verify the details available in the departmental website to reconcile the mismatch and when it is not possible reconcile, then the dealer may be put to notice and in such circumstances conciliatory approach shall be taken.



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3. Hence the following procedure is evolved for all the pending and future litigations pertaining to mis-match issues.

3.1 Broad category of mis-match cases

The mismatch between the purchasing and selling dealer in Annexure I and Annexure II of Form 1 return, prescribed under TNVAT Act, filed by them may fall in the following categories:

- * ITC claimed by the purchaser does not match with the output tax due paid/payable by the seller; or

- * Mismatch of purchase/ sales transactions resulting in purchase and/or sales suppression; or

- * Mismatch of transactions because of a dealer whose registration To anolem certificate has been cancelled,

- * On verification of check post data, certain transactions are not reported, to

3.2 The possible reasons for the mis-match report

The computer generated mismatch report can be classified as simple error as detailed in si no 1 to 5 below which could be rectified on verification and omission and evasion as detailed in sl no 6 to 8 below which require revision of assessment.

1. Clerical as wrong reporting / Non reporting of TIN, invoice number, date, category of transaction, etc...
2. The seller/purchaser reports the transaction in the manually filed original/revised return.
3. Purchaser reporting the transaction related to a Financial Year / Month in the subsequent Financial Year / Month
4. Difference noticed in data as per Annexures I and II between the actual reporting by the dealer in the TNVAT returns and data migrated in the TNCTD Portal
5. Seller/purchaser is unable to file returns due to cancellation of registration and the revision petition preferred by them is pending
6. The seller/purchaser fails to report the transactions and evades the payment of tax.



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7. The transactions are fictitious and the input tax credit is passed on illegitimately by the bogus seller or by the buyer himself by manipulating the records, including misuse of TIN of registered dealer. 8. Circular transactions.

3.3 Procedure to be followed in the cases of Mismatch

3.3.1 The assessing authority who has raised the dispute of mismatch (herein after called as Original Assessing Authority) shall list out all such pending mismatch cases in respect of his/her assessment circle and report to the DC/JC as well as in the next statistics to be furnished after this circular comes into effect, for which suitable table is being prescribed and thereafter the report the progress every month.

3.3.2 The Original Assessing Authority shall undertake verification mismatch transaction report in the department intranet website (tnvat.gov.in) with reference to the data available at both the ends i.e., buyer and seller. On verification of the data, if the Original Assessing Authority could reconcile the mismatch and finds that the mismatch is due to clerical or inadvertent error the Assessing Authority shall pass appropriate orders dropping further action.

3.3.3 If the Original Assessing Authority is unable to resolve either the whole or part of the mismatch, then the Original Assessing Authority shall issue notice to the dealer concerned indicating the discrepancy with an opportunity to show cause to reconcile the same. After the receipt of reply and after due enquiry, the Original Assessing Authority finds that the dealer has effected the transaction shall make a request to Other End Assessing Authority through email (zimbra mail) marking copy to concerned DC and JC and seek for the requisite details of verification. If on enquiry Original Assessing Authority is of the view buyer has made bogus claim / wrong claim, by being involved in bill trading by producing bogus invoice, etc., the buyer shall be assessed to tax/reversal of ITC, as the case may be, then the Original Assessing Authority shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006.



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3.3.4 The Other End Assessing Authority shall verify the details provided to him / her with reference to the manually filed original / revised returns or by issuing show cause notice and calling for the details from the dealer. After the receipt of reply and after due enquiry, the Other End Assessing Authority finds that the seller has reported the transaction and paid the tax due shall report the same to original Assessing authority and both of them shall drop further proceedings and on the other hand that if the whole or part of the transactions are not reported by the seller, then shall initiate assessment proceedings against the seller and shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006. The result of such action shall be reported to the Original Assessing Authority.

3.3.5 The Assessing Authority should issue show cause notice along with all the connected to the assessment seeking objections. On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing). The assessing officer shall grant adequate opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu, the Assessing Authority can summon the other end dealer and on request, a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days.

3.3.6 The Territorial Deputy Commissioners shall oversee the work and ensure that the verification reports are promptly be sent and the cases are finalized without any undue delay.

4. In the cases where the seller has not filed returns, best of judgment assessment could be initiated under section 22(4) of the TNVAT Act 2006. Further in the cases for the assessment year upto 2013-14, where revision was already Initiated under section 27 of the TNVAT Act and covered within the purview of section 27(6), 27(7) and 27(8) further



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actions could be pursued. Only in such cases for the assessment year upto 2013-14 where notice is to be issued for first time may get time barred by limitation. In those cases revision need not be resorted to and such cases may be reported to Joint Commissioner concerned to ensure whether limitation apply to such cases and decide accordingly.

5. In the cases where the claim of ITC is bogus made without any transfer of goods and such claim of ITC is circularly connected among several dealer, such cases may be referred to Commissioner of Commercial taxes to appoint a particular Assessing Authority to examine the transactions and pass orders so as to avoid multiplicity of proceedings and conflicting orders in respect of same transactions.

6. On implementation if any difficulty is experienced or any technical glitches or any other issue that may arise, may be brought to notice of the Commissioner of Commercial Taxes so as to take appropriate suitable action.

Sd/-M.A.Siddique
Principal Secretary/
Commissioner of Commercial Taxes"

9. After referring to the verification to be undertaken by the Assessing Authorities in regard to the materials in his possession, at paragraph 3.3.5, the Assessing Authority is required to issue notice along with all details connected to the assessment and seek objections from the assessee concerned. Thereafter, a personal hearing shall be afforded, either physically or virtually, granting adequate opportunity to the dealer to put forth its objections.

10. The Circular also envisages a request of the assessee for cross examination of the third party dealer. It also provides for such an opportunity of cross examination to be granted suo motu, if the Assessing Authority believes that it would be so appropriate. The assessment will thereafter be concluded within a period of 180 days from date of issue of show cause notice.

11. Let this procedure be followed in the present matters as well. Show cause notices, as indicated in the Circular will be issued to the petitioner within a period of four (4) weeks from today with all necessary enclosures. The assessments will be



completed thereafter within a period of 180 days, in accordance with law, after hearing the petitioner.

12. The impugned orders are set aside and these Writ Petitions allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

The State Tax Officer
Uthagai South.

+1cc to Mr.R.Senniappan, Advocate SR.No.35301

+1cc to Special Government (Taxes)Pleader SR.No.36248

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11246, 11250 and 11253 of 2019
and WMP Nos.11604, 11607, 11608,
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AD (CO)
GMY (24/06/2022)