**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 25.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**W.P.Nos.31446 & 31448 of 2022 and**
**WMP.Nos.30899 & 30900 of 2022**

Sri Ganapathy Steels,
Represented by its Proprietor,
K.Murugesan,
106/1, Attur Main Road,
Thammampatty, Gangavalli Taluk,
Salem District – 636 113. ... Petitioner in both WPs

Vs

State Tax Officer,
Attur (Rural) Assessment Circle,
Attur, Salem District. ... Respondent in both WPs

**COMMON PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned order of the Respondent passed in TIN 33553261026/2014-15 and 33553261026/2015-16 dated 13.09.2022 respectively and quash the same and further direct the respondent to re-do the assessment in accordance with the Circular No.5/2020-21 dated 24.02.2021 on mismatch.

(In both WPs)
For Petitioner : Mr.N.Murali
For Respondent : Ms.Amirtha Dinakaran
Government Advocate

**COMMON ORDER**

Ms.Amirtha Dinakaran, learned Government Advocate accepts notice for the respondent and is armed with instructions to enable final disposal of this matter, even at the stage of admission.

2. The impugned orders constitute assessments framed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2014-15 and 2015-16. The grounds that are agitated in this regard are two fold. Firstly, the petitioner would assail the order on the ground of violation of principles of natural justice pointing out that to the pre-assessment notices, the petitioner had, in fact, filed a reply on 20.07.2022, but the officer proceeds as though there were no response to the pre-assessment notices.

3. A perusal of reply dated 20.07.2022 would also indicate receipt of acknowledgment on the same day by the Deputy State Tax Officer, Attur Rural, who is the sole respondent in this Writ Petition. In such circumstances, learned Government Advocate would also not very seriously contest the defence on this score.

4. That apart, and on the merits of the matter, one of the major addition relates to the reversal of Input Tax Credit (ITC) on the ground that there is a mismatch between the details contained in the returns filed by the petitioner

when compared with those contained in the returns filed by the sellers in Annuexure II accompanying their returns.

5. There has been no cross verification of the details and thus, clear non-compliance with the procedure set out by the Commissioner in Circular No.5 of 2020-2021 dated 24.02.2021. Paragraph 3 of the Circular, which stipulates the procedure to be followed in the case of mismatch, reads as follows:

> *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.*
*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.*

***<u>3.3 Procedure to be followed in the cases of Mis-match</u>***

*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 sing 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.*

*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*

**Dr.ANITA SUMANTH, J.**



*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.*

6. In light of the aforesaid, I find merit in the challenge to the impugned orders of assessment and hence the same are set aside. The petitioner shall be called upon by issuance of notice after following the procedure set out in Circular No.5 as extracted above, heard and orders passed de novo, and in accordance with law, within a period of twelve (12) weeks from date of receipt of a copy of this order.

7. These Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

Sl **25.11.2022**

Index : Yes / No
Speaking Order

To

State Tax Officer,
Attur (Rural) Assessment Circle,
Attur, Salem District.

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