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W.P.Nos.32254 & 32258 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.12.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.32254 & 32258 of 2022
and WMP Nos.31652 & 31654 of 2022

Sri Ganapathi Traders,
Rep. by its Proprietor,
S.Sellappan,
6th Ward, Attur Main Road,
Thammampatty, Gangavalli (TK),
Salem District – 636 113.

... Petitioner in both WPs

Vs

State Tax Officer,
Attur (Rural) Assessment Circle,
No.127, Gandhi Nagar,
Attur – 636 102.

... 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 No.33553261802/2015-16 and TIN No.33553261802/2014-15 dated 13.09.2022 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.

(In both WPs)

For Petitioner : Mr.N.Murali

For Respondent : Mr.V.Prashanth Kiran
Government Advocate



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COMMON ORDER

Mr.V.Prashanth Kiran, learned Government Advocate accepts notice for the respondent and is armed with instructions to enable final disposal of these matters, even at the stage of admission.

2. The challenge is to orders of assessment dated 13.09.2022 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2014-15 and 2015-16.

3. One of the major issue arises in this matters relates to reversal of Input Tax Credit (ITC) on the ground that it is a mismatch of particulars set out in the annexures accompanying the petitioner's returns and the other dealers' returns of turnover.

4. Learned Government Advocate would fairly accede to the position that the Assessing Authority has not followed the procedure dealing with mismatch as set out by the Principal Secretary/Commissioner, Commercial Taxes in Circular No.5 of 2020-2021 dated 24.02.2021.

5. Paragraph 3 of the Circular, which stipulates the procedure to be followed in the case of mismatch, reads as follows:

*“Circular No.5/2021
LW10/12521/2016*

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



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Circular

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<i>Sub:</i>	<i>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.</i>
<i>Ref:</i>	<i>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.</i>

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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...*



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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.

3.3 Procedure to be followed in the cases of Mis-match

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



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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



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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.

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.

7. Yet another issue that arises relates to non-maintenance of books of accounts. According to the petitioner, this issue has been explained before the Assessing Authority who was not taken proper note of the same. Insofar as the larger issue is set aside, this issue is also set aside.

8. 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.

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

02.12.2022

Index : Yes / No
Speaking Order
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To

State Tax Officer,
Attur (Rural) Assessment Circle,
No.127, Gandhi Nagar,
Attur – 636 102.



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Dr.ANITA SUMANTH,J.

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