BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.04.2022
CORAM
**THE HONOURABLE MR. JUSTICE C.SARAVANAN**

Writ Petition (MD)Nos.7853, 7854, 7857, 7858, 7861, 7865 and 7866 of 2021
and
W.M.P.(MD)Nos.5986, 5988, 5989, 5991, 5994, 5996 and 5997 of 2021

Tvl. Veyil Vantha Ambal & Co.,
Rep. by its Proprietor,
V.P.M.Muthuvijayan
No.2/82, Thallakulam Road,
Paramakudi,
Ramanathapuram District - 623 707. .. Petitioner in all the W.Ps.

**Versus**

1.The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Paramakudi Assessment Circle,
Commercial Tax Building,
No.3/103, Madurai Mandapam Main Road,
Thirunagar, Theligathanallur,
Paramakudi,
Ramanathapuram District - 623 707. .. Respondents in all the W.Ps.

**Prayer:-** These Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33655420773/2009-10, 2007-08, 2010-11, 2013-14, 2011-12, 2012-13 and 2008-09, dated 14.01.2020 and quash the same.

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|---|---|---|
| For Petitioner (in all the W.Ps.) | : | Mr.B.Rooban |
| For Respondents (in all the W.Ps.) | : | Mr.K.S.Selvaganesan Additional Government Pleader |

**COMMON ORDER**

By this common order, these Writ Petitions have been disposed of.

2.This is a third round of litigation before this Court. Earlier, the petitioner had filed W.P.(MD)Nos.17427 of 2015. In the said Writ Petition, the petitioner had challenged the order dated 24.07.2015. The case was remitted back to the respondents to provide all the documents relied upon by them in the impugned orders dated 24.07.2015. The impugned proceedings were set aside with the following observation:-

*''6. Considering the submissions made on either side, this Court is constrained to pass the following order:*

*In the interest of justice, I am of the opinion the impugned order can be set aside and the matter may be remitted back to the respondent. Accordingly, the impugned order, dated 24.07.2015, is set aside and the matter is remitted back to the 2nd respondent for fresh consideration. Consequently, the writ petition is allowed. The 2nd respondent is directed to provide all the documents relied on by them in the impugned notice, dated 24.07.2015 within a period of two weeks from the date of receipt of a copy of this order and thereafter, by affording an opportunity of personal hearing, pass an appropriate order within a period of four weeks thereafter.*

*Consequently, connected miscellaneous petition is also closed. No costs''.*

3.Thereafter, orders came to be passed on 04.04.2018 in respect of the assessment years 2006 - 2007 to 2013 - 2014. Thereafter, the petitioner has approached this Court for the second time in W.P.(MD) Nos.11970 to 11977 of 2018. By an order dated 14.11.2018, the Writ Petitions were disposed of with the following observation:-

*''3.Even after the said order of remand, the second respondent herein instead of furnishing all the documents directed to be given, chose to take a stand that these documents have already been furnished the writ petitioner. An averment is made in the impugned orders that information was provided to this effect. It is thus obvious that the direction given by this Court has not been complied with. What was made available to the petitioner was only a copy of the website report. In fact, this report was already given to the petitioner herein. The petitioner's specific contention is that he did not enter into such transactions with the other end dealers and that therefore, the second respondent ought to have made available copies of the invoices standing in the name of the petitioner herein in favour of the other end dealer. But, admittedly, such copies of invoice were not provided.*

*4.In JKM Graphics Solutions Private Limited vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai* *reported in (2017) 99 Vst 343 (Mad), held as follows :*

*48....... The reasons for reopening should not only be explicitly stated, but should be duly supported with adequate information. Invariably in all cases, the assessing officers merely state that on going through the details in the official website, it is seen that there is mismatch in transaction and the dealer is called upon to explain as to why the input-tax-credit availed by him, should not be directed to be reversed........*

*49.... However, in the considered view of this Court that even prior to issuance of the show cause notices, the department has to conduct an enquiry into the matter. It is not always the case, where the selling dealer is at fault and in certain cases, the purchasing dealer could be at fault and in certain other cases both may not be at fault and it may be an inadvertent error. There is a yet another category of cases, where a mismatch occurs on account of when the dealer has reported his turnover. There may be cases of unfructified transactions, cases of loss of goods due to various force major conditions and such other matters.....*

*50.As pointed out earlier, in cases where mismatch occurs, it is a starting point for an enquiry. The first phase of enquiry should be at the Department level, as in most cases, both the dealers are registered in different assessment circles. The court has come across cases, where such mechanically drafted show-cause notices have been sent by assessing officers without embarking upon any enquiry, even though the other end dealer is alsoregistered within his jurisdiction. Thus, when the asssessing officer has data to show that the dealers registered with him, whose returns have been accepted when compared to the other end dealer does not match, then the assessing officer is first required to enquire with the assessing officer of the other end dealer to make verifications as to whether the mismatch could have occurred due to any one of the factors, which may not be due to the deliberate default of the dealer, satisfy himself that and after such verification, it prima facie appears that the returns to be revised, at that stage, the assessing officer would be entitled to issue a show cause notice containing full particulars and clearly stating as to what was the scope of enquiry done by him and why he is of the prima facie view that the dealer has failed to file* *proper returns or suppressed information. It is only then the dealer would be in a position to put forth his defence and demonstrate as to how this prima facie view is without any basis.?*

*5.In the present cases, the orders impugned in these writ petitions do not satisfy the parameters laid down in JKM Graphics Solutions Private Limited vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai. I therefore come to the conclusion that the orders impugned in these writ petitions are liable to be set aside for two reasons. The first reason is that the direction given in the order dated 09.10.2015 made in WP(MD)No.17427 of 2015 has not been complied with. The second reason is that the parameters laid down in JKM Graphics Solutions Private Limited vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai have not been followed. Therefore, the orders impugned in these writ petitions are set aside and the matters are remitted to the file of the second respondent to pass orders afresh in accordance with law after following the parameters laid in the aforesaid case.*

*6.These writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.''*

4.Pursuant to the above said order, the respondents issued notices to the petitioner and called upon the petitioner to appear for *de novo* proceedings. Under these circumstances, the petitioner made detailed submissions on 18.11.2019 in respect of the respective assessment orders, which have culminated in the impugned orders dated 14.01.2020. The impugned orders are sought to be assailed by the petitioner primarily on the ground that the petitioner was merely called upon to come for personal hearing pursuant to the order of the Court in W.P.(MD)No.11970 to 11977 of 2018, dated 14.11.2018 and that the petitioner was taken by surprise that the impugned orders came to be passed, where the demand pertaining to the alleged sale made by the petitioner based on the information gathered from the Web portal have been given a go-by/deferred, but the demand in respect of other aspects were confirmed without due notice to the petitioner. It is therefore submitted that the impugned orders have to go.

5.Opposing the prayer, the learned Additional Government Pleader for the respondents submits that the impugned orders are well reasoned and require no interference. He submits that the demands that were confirmed earlier on 24.07.2015, were partly based on the information gathered from the Web portal of the Commercial Taxes Department. Since no other documents were available in the hands of the respondents, the proposal insofar as the demand relating to sale to third parties based on the information gathered from the Web portal, was dropped. However, the other proposals survive and therefore, the orders have been passed. It is submitted that the orders have been passed after considering the petitioner's representation and therefore, there is no merit in the Writ Petitions. It is further submitted that the petitioner has alternate remedy before the Appellate Deputy Commissioner and therefore, the Writ Petitions are liable to be dismissed.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7.Incidentally, in identical cases, in W.P.(MD)No.7841 of 2015 etc. batch, the Writ Petitions were dismissed. The operative portion from the said order reads as follows:-

> *''9.There is no merit in these Writ Petitions. There are several disputed question of facts. The issue relating to suppression of sale receipts which were not found from the petitioner or the documents which were recovered from the petitioner. These aspects were not replied by the petitioner in the replies dated 18.11.2019. The issues have to be only settled in an appeal proceeding before the appellate authority namely, the Appellate Deputy Commissioner (CT), Virudhunagar. There is no case made out for interference, as there is no violation of principles of natural justice. The documents, which were directed to be furnished by the petitioner, were relating to documents to substantiate alleged sales suppression based on the information gathered from the Web portal of the Commercial Taxes Department. No demand has been confirmed in respect of others. As far as the other issues in respect of which demand has been confirmed, it is based on the available records.*
>
> *10.Considering the above, I am inclined to dismiss the Writ Petitions by giving liberty to the petitioner to file a statutory appeal before the Appellate Deputy Commissioner (CT), Virudhunagar, within a period of 30 days from the date of receipt of a copy of this order. In case, the petitioner files such appeal, the same will be entertained and disposed in accordance with law. Needless to state, before final orders are passed, the petitioner shall be heard. The Appellate Deputy Commissioner (CT), Virudhunagar, shall consider the plea of the petitioner on merits and dispose of the same.*
>
> *11.These Writ Petitions are dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.''*

8.The facts of the said cases are identical insofar as the issues that were canvassed in these Writ Petitions also. There is no merit in these Writ Petitions also. Therefore, I am inclined to dismiss these writ petitions by giving liberty to the petitioner to file a statutory appeal within a period of 30 days from the date of receipt of a copy of this order in terms of the above decision.

9.These Writ Petitions are dismissed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.The learned counsel for the petitioner requests for return of impugned orders to facilitate the petitioner to file statutory appeal before the Appellate Deputy Commissioner. Hence, Registry is directed to return the same.



Sd/-
Assistant Registrar(CS.II)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

**To**
1.The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of
Commercial Taxes, Ezhilagam, Chepauk, Chennai - 600 005.

2.The Commercial Tax Officer,
Paramakudi Assessment Circle,
Commercial Tax Building,
No.3/103, Madurai Mandapam Main Road,
Thirunagar, Theligathanallur, Paramakudi,
Ramanathapuram District - 623 707.

3. The Appellate Deputy Commissioner (CT),
Virudhunagar

**Copy To:**

The Section Officer,
ER Section,
Madurai Bench of Madras High Court, Madurai(2 Copies)

+1 CC to M/s.SPL.GP. ( SR-21476[F] dated 26/04/2022 )

+7 CC to M/s.B.ROOBAN, Advocate ( SR-21577[F] dated 27/04/2022 )

**Common order in**
**WP (MD) Nos.7853, 7854, 7857, 7858, 7861, 7865 and 7866 of 2021**
**25.04.2022**

SA(26.05.2022) 6P 14C