BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.19551 of 2022
and
W.M.P.(MD)Nos.14278 and 14279 of 2022

M/s.Sri Bhuvaneshwari Total Gas Distributors,
Rep. by its Proprietor,
R.Senthilkumar,
No.183, South Kaliyamman Kovil Street,
Pattukkottai – 614 601,
Thanjavur District. .. Petitioner

Versus

The State Tax Officer,
Pattukkottai I Assessment Circle,
C.T. Buildings,
Pattukkottai,
Thanjavur District. .. Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the respondent in TIN:33304162051/2014-2015, dated 27.05.2022, quash the same as illegal, arbitrary, without jurisdiction and against the principles of natural justice and also against the judgments of this Court and against the Circular issued by the Commissioner of Commercial Taxes.

For Petitioner	:	Mr.K.Soundararajan
For Respondent	:	Mr.C.Satheesh Government Advocate

ORDER

The petitioner challenges the revision proceedings initiated by the respondent in TIN:33304162051/2014-2015, dated 27.05.2022.

2.The petitioner is a distributor for total gas supplied by Total Energies and registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as "the TNVAT Act"]. During the assessment year 2014-2015, the petitioner filed their monthly returns in Form-K upto September 2014 under Section 3(4) of the TNVAT Act and thereafter, filed the monthly Form-I returns under Section 3(2) of the TNVAT Act. Since the petitioner exceeded the limit of Rs.50 lakhs, the same was accepted and deemed assessment has been made under Section 22(2) of the TNVAT Act on 30.06.2016.

3.The respondent alleged that on verification of Annexure-I of the petitioner with the seller's Annexure-II available in the Department's Website, it was found that the petitioner had suppressed the purchases for a value of Rs.43,31,915/-, which is the estimated sales. Thereafter, the respondent proposed to levy penalty under Section 27(3)(c) of the TNVAT Act on the alleged suppression detected on the basis of Web Report. A show cause notice, dated 03.09.2021 was issued and personal hearing was fixed on

15.12.2021. From the notice, it is seen that the petitioner is said to have effected total purchase of goods to Rs.1,29,55,619/-. Considering the overwhelming purchase, the turnover was found to be disproportionate to the return submitted. Hence, the respondent issued show cause notice. The petitioner due to ill-health, was unable to immediately respond to the show cause notice. In the meanwhile, the impugned order dated 27.05.2022 came to be passed. Even in the impugned order, no particulars or details given except for the difference found in the returns "K" and "I".

4.Further, the petitioner submitted that the method of estimating the purchase omission based on Annexures-I and II available in the Department's Website is not approved by this Court in the case of **JKM Graphics Solutions Private Limited vs. CTO, Vepery Assessment Circle**, wherein this Court had set aside the revision notices and the revision orders made based on Annexure – II of the sellers obtained through the Department Website. Against the said order, the Department filed a review in Review Application No.173 of 2018. The same was dismissed.

5.Further, the learned counsel relied on a judgment of this Court in the case of **Sri Hariharasudan Reboring Centre vs. DCTO, Tiruvarur [W.P.No.21557 of 2017]**, wherein this Court had held that the assessment based on the Web report of the Department, without conducting any enquiry, is not in accordance with law.

6.Further, the learned counsel referred to a Circular of the Commissioner of Commercial Taxes in No.5/2021 [LW10/12521/2016], dated 24.02.2021, wherein the Commissioner had issued several directions to the assessing officer how the assessments should be made if the same is based on the Web report. Despite the same, not only violating the directions of this Court, further, not adhering to the guidelines issued by the Commissioner, the impugned order came to be passed.

7.The circular of the Commissioner, dated 24.02.2021, is a detailed one wherein, broad guidelines, calling for particulars of mismatch cases, the possible reasons for the mismatch report, procedure to be followed in cases of mismatch are given in detail.

8.The learned counsel for the petitioner submitted that as per the show cause notice, there is no detail with regard to the powers as well as in the impugned order also, there is no detail. As per Section 3.3.5, it is stated that the assessment authority should issue show cause notice along with details seeking objections. On receipt of the objections, the assessing authority shall fix a date and time for 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 the request made by the assessee or *suo motu*, 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 nonexistent, the Assessing Officer may proceed to make an assessment on the basis of material on record, in accordance with law. The entire process involving issuance of show cause notice till final order may be completed within a period of 180 days. In this case, such procedure is not followed. In view of the same, the impugned order is liable to be set aside and fresh assessment to be made after giving appropriate opportunity to the petitioner.

9.The learned Government Advocate appearing for the respondent submits that the petitioner was given an opportunity and thereafter, show cause notice was issued, for which, he failed to respond and make his objections. The petitioner can very well approach the respondent and the petitioner could have informed the respondent about his ill-health and sought time. Now, after the orders have been passed on 27.05.2022, which is an appealable order and the appeal ought to have been filed within 30 days before the Deputy

Commissioner, the petitioner approached this Court and therefore, strongly opposed to entertain this Writ Petition.

10.The learned Government Advocate further submitted that though in the counter affidavit, they have given the details about the turnover reflecting in Annexure-II, the Department primarily proceeds on the declaration found in Annexure – II, corresponding to Annexure - II of the other dealers and raised demands, finding no corresponding entry made. In such cases, the details necessarily have to be provided.

11.As per Section 27 of the Act, it is clear that no orders shall be passed under Sub-Section(1). So, in this case, admittedly, show cause notice has been issued, the dealer received the same and failed to respond, shown his intention to object the same, with materials or particulars, nothing is stated to the Assessing Officer. Further, the Circular is only an internal communication. Act will prevail over the Circular. As per Section 27 of the Act, it is for the petitioner to inform the Assessing Officer, provide particulars, all the details.

12.Considering the submissions and perusal of materials, it is seen that admittedly, no details given, the counter is silent about the Circular of the Commissioner, dated 24.02.2021, which is primarily issued to follow principles of natural justice. The principles not followed.

13.It is seen that the petitioner has received a show cause notice and due to illness, he was unable to reply to the show cause notice. Hence, the impugned assessment order is passed without hearing the petitioner collecting any particulars. There is no specific allegation that, in Annexure - II of Vendors, certain entries made mismatched with Annexure - I and II of the petitioner's tax returns. It is the duty of the Assessment Officer to give particulars as per the Circular of the Commissioner. In this case, the Commissioner's Circular not followed. Hence, the impugned order is set aside.

14.Accordingly, this Writ Petition is allowed. The respondent is to give the mismatch particulars, so that the petitioner can make his reply, affording personal hearing to the petitioner. Thereafter, the assessment order can be passed by following the Circular of the Commissioner. The entire process to be completed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No 24.08.2022

To

The State Tax Officer,
Pattukkottai I Assessment Circle,
C.T. Buildings,
Pattukkottai,
Thanjavur District.

M.NIRMAL KUMAR, J.

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Order made in
W.P.(MD) No.19551 of 2022

24.08.2022