IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.8369 and 8371 of 2021
and
W.M.P. Nos.8924 and 8925 of 2021

M/s.Farwood Industries Limited,
Rep. by the Managing Director ... Petitioner in both writ petitions

Vs.

Assistant Commissioner (CT)
Sholinganallur Assessment Circle,
Chennai-600 035. ... Respondent in both writ petitions

PRAYER in W.P.No.8369 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN:33020920465/2015-16 dated 16.02.2021 and quash this assessment proceedings as illegal and direct the respondent to pass fresh orders by following the principal of law laid down in the orders of the Madras High Court in the mismatch of website cases and after giving personal hearing.

PRAYER in W.P.No.8371 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified

Mandamus calling for the records of the respondent in his proceedings in TIN 33020920465/2016-17 dated 16.02.2021 and quash this assessment proceedings as illegal and direct the respondent to pass fresh orders by following the principal of law laid down in the orders of the Madras High Court in the mismatch of website cases and after giving personal hearing.

For Petitioner in both W.Ps.	: Mr.C.Bakthasironmani
For Respondents in both W.Ps.	: Ms.Amritha Dinakaran Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the order of the respondent dated 16.02.2021 for the assessment years 2015-16 and 2016-17.

2. The petitioner is a registered dealer under Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "TNVAT Act") and engaged in the manufacturer and sales of cupboard, wardrobe, furniture, doors and windows. During the assessment years 2015-16 and 2016-17 the petitioner purchased raw materials by way of interstate and intrastate sales for use as raw material in the manufacture of above items and claimed input tax credit on the purchases of the same. VAT audit was conducted at the petitioner's

place of business on 24.04.2017. During the course of VAT Audit, number of defects were noticed interalia including:

> *"<u>Defect No.1:</u> Purchase suppression on verification of sales details of other end dealer's Annexure II*
>
> *<u>Defect No:2:</u> Wrong availment of ITC for the purchase made from Registration cancelled dealers*
>
> *<u>Defect No.3:</u> Mismatch of ITC*
>
> *<u>Defect No.4:</u> Reversal of ITC on stock Transfer*
>
> *<u>Defect No.5:</u> Sales suppression on verification of checkpost movement (consigner movement)*
>
> *<u>Defect No.6:</u> Purchase suppression on verification of checkpost movement (consignee movement)*

2.1.On the basis of the above inspection, a notice was issued on 23.10.2019 calling upon the petitioner to submit its objection. The petitioner responded to the above notice on 13.01.2020, 05.02.2020 and 27.02.2020 wherein, details of invoice number, date of invoice, value of invoice which has been treated as sales suppression (check-post movement) was sought for and the same were not furnished by the respondent. The impugned order has been made merely recording the fact that the petitioner had filed their reply on the following dates viz., 30.12.2019, 13.01.2020 and 05.02.2020. The assessment order does not reveal that the above request was even considered by the assessing officer. The following portion of the impugned order is relevant and thus extracted hereunder:

> *"A notice was issued to the dealers on 23.10.2019, which was served on 05.12.2019, inviting to file their objections, if any to the above proposal. The dealers have filed their reply / objections to the proposal through their letter dated 30.12.2019, 13.01.2020 and 05.02.2020 and assured to filed further reply / objections within another fifteen days and requested time in their letter dted 28.02.2020. But they have neither appeared in person subsequently nor filed any further objections."*

2.2. It may also be relevant to note that majority of the defects relates to the input tax credit disallowed in view of the mismatch, purchase suppression and availment of Input Tax Credit on purchases from registration cancelled dealers. This Court in the case of *JKM Graphics Solutions limited vs. Commercial Tax Officer, Vepery Assessment Circle reported in 99 VST 343* had observed that the revenue must device a mechanism to deal with the issue of mismatch and the other disputes involving input tax credit. Pursuant to the above order of this Court, the Commissioner of Commercial Tax had issued Circular No.5 of 2021 wherein detailed mechanism was devised to resolve disputes involving wrongful claim of input tax credit. Subsequent thereto, this Court has consistently held that the impugned orders of assessment involving issues relating to ITC covered by the said circular regarding input tax credit ought to be redone on the basis of the mechanism devised in the said circular.

3. The learned counsel for the respondent would also fairly submit that in view of the decision of this Court in *JKM Graphics Solutions limited vs. Commercial Tax Officer, Vepery Assessment Circle* and the consequential circular there is need to redo the assessment.

4. In these circumstances, the impugned orders are set aside and the matters are remanded back to the respondent to redo the assessment. It is open to the respondent to complete the assessment de-novo within a period of 12 weeks from the date of receipt of a copy of this order after affording reasonable opportunity to the petitioner in accordance with law. In view of the above Writ Petitions are disposed of. No costs. Consequently, connected

miscellaneous petitions are closed.

14.09.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
mka

To:
Assistant Commissioner (CT)
Sholinganallur Assessment Circle,
Chennai-600 035.

MOHAMMED SHAFFIQ, J.

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