IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos. 9276, 9282, 9285 & 9287 of 2023
and
W.M.P.Nos. 9373, 9376, 9381, 9382, 9384 to 9387 of 2023

Tvl.Abhivairavans Plumbing Co.,
Rep. by its Managing Partner Mr.K.Ramanathan,
No.59/1, Arcot Road,
Kodambakkam,
Chennai - 24. .. Petitioner in all writ petitions

vs

The Assistant Commissioner (ST),
Kodambakkam Assessment Circle,
Greams Road, Chennai - 06. .. Respondent in all writ petitions

Prayer in W.P.No.9276 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling in records on the files of the 2nd respondent in TIN/33971404021/2012-13 dated 02.01.2023 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to law.

Prayer in W.P.No.9282 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling in records on the files of the 2nd respondent in TIN/33971404021/2013-14 dated 02.01.2023 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to law.

Prayer in W.P.No.9285 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling in records on the files of the 2nd respondent in TIN/33971404021/2014-15 dated 02.01.2023 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to law.

Prayer in W.P.No.9287 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling in records on the files of the 2nd respondent in TIN/33971404021/2015-16 dated 02.01.2023 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to law.

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|---|---|---|
| For Petitioner | : | Mr.D.Vijaykumar<br>(in all writ petitions) |
| For Respondent | : | Mr.V.Prashanth Kiran<br>Government Advocate<br>(in all writ petitions) |

COMMON ORDER

Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice and states that he has sufficient instructions to enable final disposal of these matters at this juncture. In light of the consent expressed by both parties and since the issue involved is short, final orders are passed.

2. Impugned orders dated 02.01.2023 for the periods 2012 – 2013 to 2015 – 2016 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 are liable to be set aside since the officer has not supplied the details on the basis of which he has drawn the inference that there is mis-match in returns filed by the petitioner with the third party returns.

3. Circular No. 5 of 2021 dated 24.02.2021 sets out the following procedure, in matters of mismatch:-

> *"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 to reconcile the same. After the receipt of reply and after due enquiry, the Original Assessing Authority finds that the seller has effected the transaction shall make a request to Other End Assessing Authority through email (zimbra mail) marking copy to the 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 details* *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 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 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 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."*

4. It is incumbent upon the authorities to follow the aforesaid procedure scrupulously. Hence the impugned orders are set aside. Let the assessments be re-done after the particulars of alleged mis-match has to be supplied to the dealers. It is made clear that the details shall be supplied within a period of six weeks from today and the assessments be completed within sixteen weeks after hearing the petitioner. If the details are not supplied within six weeks the matter shall be allowed to rest as the assessments relate to the periods 2012 - 2013 to 2015 - 2016. This order relates to

only the issue of mis-match and no other arguments have been raised touching upon other grounds. Thus, the assessments on all other counts stand confirmed.

5. Writ petitions stand disposed in above terms. No costs. Connected miscellaneous petitions are closed.

03.04.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To:

The Assistant Commissioner (ST),
Kodambakkam Assessment Circle,
Greams Road, Chennai - 06.

DR. ANITA SUMANTH,J.

ssm

W.P.Nos. 9276, 9282, 9285 & 9287 of 2023

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