IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.8099, 8102 to 8105, 8107, 8110, 8115 & 8116 of 2020
and W.M.P.Nos.9617, 9619, 9621, 9623, 9624, 9626,
9634, 9635, 9636 of 2020

M/s.J.A.Motor Sport,
Rep by its Proprietor J.Anand
No.69-A, Aerodrome Road,
Singanallur, Coimbatore. ... Petitioner in all W.Ps

Vs.

1.The Assistant Commissioner (ST),
Singanallur North Circle,
Coimbatore.

2.The State Tax Officer (Enforcement),
Group III, Coimbatore.

3.The Deputy Commissioner of Central Excise
Coimbatore III Division (Service Tax Cell)
No.1237, Trichy Road,
Coimbatore 641 018.

4.The Commercial Tax Officer,
(Enforcement), Group III, Coimbatore.

(Suo motu impleaded as R4 in these writ petitions by
CSNJ vide order dated 20.07.2023) ... Respondents in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned proceedings of the first respondent in TIN:33221822940/2007-08, 33221822940/2008-09, 33221822940/2009-10, 33221822940/2010-11, 33221822940/2011-12, 33221822940/2012-13, 33221822940/2013-14, 33221822940/2014-15 and 33221822940/2015-16 respectively and quash the proceedings dated 28.02.2020.

In all W.Ps.

For Petitioner	:	Mrs.R.L.Ramani, Senior Counsel
For Respondents	:	Mr.Haja Nazirudeen, AAG Assisted by Mr.M.Venkateswaran Special Government Pleader (Tax)

COMMON ORDER

By this common order, all the writ petitions are disposed of.

2. In these writ petitions, the petitioner has challenged nine different assessment orders all dated 28.02.2020 for the assessment years 2007-08 to 2015-16.

3.The petitioner has earlier approached this Court by way of writ petitions in W.P.Nos.35694 to 35702 of 2016 challenging the notices issued on 02.06.2016 under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the TNVAT Act). These notices were issued pursuant to the inspection conducted by the Enforcement Wing under the supervision of the Joint Commissioner (CT) (Enforcement wing) under Section 64 of the TNVAT Act. The specific case of the petitioner is that the petitioner is a service provider and has obtained service tax registration from Sales Tax Department under the Finance Act, 1994, as early as in the year 2005 and for renting of immovable property, the petitioner has been remitting service tax under the Finance Act. In response to the inspection conducted by the Enforcement Wing, the petitioner had also filed a detailed report prior to the filing of the above Writ Petitions. Since notices dated 02.06.2016 were issued, the petitioner has challenged the same in the above writ petitions. This Court by its order dated 07.10.2016 has passed the following order:

> *"16. There will be a direction to the Commercial Tax Officer (Enforcement) Group III, Coimbatore to consider the petitioner's objections/clarifications dated 08.02.2016, afford an opportunity of person hearing, consider all the documents*

and thereafter give a reply after recording reasons. The above exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. Till then, the Assessing Officer or any other Authority shall not initiate any coercive action against the petitioner. Since the Commercial Tax Officer, (Enforcement), Group III, Coimbatore is not a party to these writ petitions, he is suo motu impleaded as the fifth respondent in these writ petitions."

4.Although the order contemplates, the exercise to be completed by the Commercial Tax Officer (Enforcement) Group III, Coimbatore, within a period of 8 weeks from the date of receipt of copy of the order, summons were issued by the Enforcement Wing on 31.01.2018. The petitioner has replied to the same stating that the exercise that was contemplated in paragraph No.16 of the order of this Court dated 07.10.2016 had not been complied with and therefore, no further proceedings can be initiated.

5.The respondent /Assessing officer in his reply to the petitioner's representation, vide letter bearing Ref.No.1135/2017/A4, dated 15.03.2018, has stated that the copy of the order has not been received by the Commercial Tax Officer, (Enforcement wing) Group III, Coimbatore and the Enforcement Division of Coimbatore also has not received the copy of the order. Although the respondent /jurisdictional Assistant Commissioner, has stated that the order of this Court was not received vide communication dated 15.03.2018, the fact remains that the Enforcement Wing had sent summons to the petitioner on 31.01.2018. 'Thus, there is no truth in the aforesaid communication. Instead of passing orders in accordance with the order passed by this Court on 07.10.2016. The respondent has straight away proceeded to pass the impugned assessment orders and the amounts have been confirmed. It clearly shows that the orders have been passed in violation of the order of this Court dated 07.10.2016. The impugned orders have been passed, based on the notices dated 02.06.2016, which have already been quashed by this court while passing the aforesaid order dated 07.10.2016 in W.P.No.35694 to 35702 of 2016. Therefore, the impugned orders are liable to be quashed.

6.In view of the above observations, the impugned orders are quashed and the case is remitted back to the Commercial Tax Officer (Enforcement wing) Group III, Coimbatore to pass a speaking order on the petitioner's representation as was ordered by this Court on 07.10.2016 in W.P.No.35694 to 35702 of 2016. Considering the fact that the petitioner has not impleaded the aforesaid Officer as respondent in these Writ Petitions, the said officer namely The Commercial Tax Officer (Enforcement), Group III, Coimbatore, is *suo motu* impleaded. The concerned Officer namely the 4th respondent shall pass appropriate order preferably within a period of 8 weeks from the date of receipt of copy of this order. Such order shall be passed, after considering the petitioner's objections/clarifications dated 08.02.2016 and affording an opportunity of hearing to the petitioner. Thereafter, the respondent/Jurisdiction Assistant Commissioner/ Sales Tax Officer may issue notice under Section 27 of the TNVAT Act.

7. It is made clear, if notices are issued under Section 27 of the TNVAT Act, 2006, they shall be construed to be in time, considering the fact that the petitioner has been before this Court since 2016. Thus the time spent in prosecuting these writ petitions in both the rounds shall stand excluded for the purpose of computation of Limitation under Section 27 of the TNVAT Act.

8. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

20.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
vkr

To

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C.SARAVANAN, J.

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