**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 21.07.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.Nos.10564 and 10567 of 2021**
**and**
**W.M.P.Nos.11152 and 11154 of 2021**

Jay Em Exports,
Represented by its Proprietor,
New No.54, K.B.Dasan Road,
S.I.E.T. Administrative Block,
Teynampet, Chennai 600 018. ... Petitioner in both petitions

v.

The State Tax Officer,
Alwarpet Assessment Circle,
Chennai. ... Respondent in both petitions

**Common Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the entire records of the respondent in TNGST: 0820335/2004-05 and TNGST:0820335/2005-06 dated 26.03.2021 and quash the orders passed therein.

For petitioner in both petitions : Mr.A.P.Srinivas

For Respondent in both petitions : Ms.Amritha Dinakaran,
Government Advocate

**COMMON ORDER**

These two writ petitions are filed challenging the orders of assessment for the Assessment Years 2004-05 and 2005-06 on the premise that the orders of assessment having been passed without furnishing copies of D3 report, the same stands vitiated as having been made in violation of principles of natural justice. Secondly, the impugned orders of assessment having been made after an unreasonable delay stands vitiated as being arbitrary.

2. In response to the contention of the orders being passed after unreasonable delay, Ms.Amrita Dinakaran, learned Government Advocate for the respondent submitted that whenever attempts were made to proceed with the re-assessment, the petitioner had submitted that the orders of assessment were challenged and the subject matter of writ appeals, which was stated to be pending. Therefore, the Assessing Officer had no other choice but to keep the assessment pending. As a matter of fact, it was submitted that though Writ Appeals came to be filed with a delay and condone delay petitions were also filed sometime in the year 2013, it is only after the impugned orders of assessment came to be passed that the writ appeals were listed for hearing and were disposed of with an endorsement that, in view of the assessment orders

having been passed, the same has become infructuous.

3. It is further submitted by the learned Government Advocate that though it may be possibly stated that the assessments must be completed within a reasonable time, any delay in the present case cannot be attributed to the Department. To the contrary, the delay is only in view of the repeated assertion/reply/objection made by the petitioner, requesting the department to exercise restraint in proceeding further with the revision of assessment.

4. As a matter of fact, at least three notices have been issued, one dated 08.01.2013, followed by 04.11.2020 and 23.11.2020. It is only after waiting for more than seven years that the respondent has proceeded to complete the assessment before numbering of writ appeals. This Court finds that the delay, if any, is attributable to the petitioner and thus, does not vitiate the assessment proceeding.

5.The learned counsel for the petitioner would submit that if the respondent intended to proceed despite the objection, citing pendency of the writ appeals and requesting them to keep the matters in abeyance, they ought to have indicated the same enabling them to file their objection. Apart from that, non-furnishing of D3 report would also constitute violation of principles of natural justice.

6. On merits, it was submitted by the learned counsel for the petitioner that the only question which arises is whether the freight charges, which is charged, is eligible for deduction in terms of Rule 6 of the Tamil Nadu General Sales Tax Act. Further for the previous years, the claim of deduction towards the freight charges have also been accepted by the Department. In response to the same, the learned Government Advocate for the respondent would submit that there is no resjudicata and every assessment year will have to be treated as an independent unit of assessment.

7. It was further submitted by the learned counsel for the petitioner that the original assessment orders were made on the basis of the proposal of the Enforcement Wing without furnishing copies of D3 report and thus suffers

from violation of principles of natural justice. It is also contrary to the settled principle that the Assessing Officer, as a quasi-judicial authority, must apply his mind independently and failure to do so vitiates the entire proceedings.

8. Heard both sides. Perused the material on record.

9. Insofar as the challenge on the ground of violation of principles of natural justice for non-furnishing of copies of D3 report / proposal, this Court finds that there is merit in the above contention. This Court on earlier occasion had held that if the assessments are made on the basis of D3 report / proposal then such material should be made available to the petitioner prior to finalising the assessment. In the present case, admittedly the copies of D3 report / proposal which forms the basis of the assessment has not been furnished to the petitioner. In this regard, it may be useful to refer to the following judgments:

***i.Kaesav Saw Mill v. Assistant Commissioner, 2014 SCC OnLine Mad 4203***

> *"8...Therefore, if the assessing officer proposes to rely upon the findings recorded by the second respondent in the D3 proposal then, such material should have been made available to the petitioner prior to finalising the assessment and providing an opportunity to rebut the same. The same has not been furnished to the petitioner except for referring to such order in the*

*principles of natural justice in these cases. That apart, no opportunity of personal hearing was afforded to the petitioner".*

*(emphasis supplied)*

***ii. M/S.Kapil Agencies vs 6 The Joint Commissioner(Ct) W.P.Nos.26730 to 26734 and 26916 to 26925 of 2016***

*"....*

*29. As noticed above, there has been no application of mind to the objections given by the petitioner nor to the documents produced by the petitioner which are voluminous, mechanically the assessments have been completed. As stated above, because of the fact that the super officers viz. the second and sixth respondents had directed the Assessing Officer to implement the D3 proposal, the Assessing Officer failed to take into consideration the documents produced by the petitioner nor has given any cogent reasons as to why the petitioner's transactions are to be disbelieved.*

.........

*34. The first respondent shall afford an opportunity of personal hearing to the petitioners, peruse all the documents and call for further particulars if needed and after affording an opportunity to the petitioners, redo the assessments in accordance with law. It is made clear that the first respondent shall independently, consider the objections, without being in any manner influenced by the D3 proposals submitted by the second respondent nor rejection of the arbitration claim by the sixth respondent."*

10. In view of the above, the impugned orders of assessment are set aside

with a direction to the respondent to furnish the D3 report / proposal to the petitioner within a period of 3 weeks from the date of receipt of a copy of this order. The petitioner is granted liberty to file his objection within a period of 4 weeks thereafter. The assessment shall be completed within a period of 8 weeks from the date of objection filed, if any.

11. With the above directions, the writ petitions stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

**21.07.2023**

Index: Yes/No
Internet: Yes/No
Speaking / Non speaking order

hvk/shk

**MOHAMMED SHAFFIQ,J.**

shk

To

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Alwarpet Assessment Circle,
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