



W.P.No.14783 of 2020 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.14783, 14786, 14788, 14791, 14793, 16305, 16310,
16312 and 16315 of 2020
and W.M.P.Nos. 4945 of 2021, 18372, 18373, 18374, 18375,
18377, 18379, 18380, 18381, 18370, 18371, 20405, 20406,
20415, 20418, 20422 to 20425 of 2020

W.P.No.14783 of 2020

M/s.CBC Fashions (Asia) Private Limited,
Rep. By its Managing Director – T.R.Vijayakumar,
No.11, CBC Building,
M.R.Nagar,
K.N.P.Colony Post,
Dharapuram Road,
Tirupur – 641 608.
Tirupur District.

.. Petitioner

vs

The Assistant Commissioner [ST] [FAC]
Bazaar Circle,
Tirupur,
Tirupur District.

.. Respondent

Prayer in W.P.No.14783 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN.33492425404/2008-09 dated 19.08.2020 quash the same as illegal and contrary to the directions of this Court



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in W.P.Nos.23015, 23025, 23028, 23032 & 23034 of 2019 dated 06.08.2019 and W.P.Nos. 23165, 23184, 23185 & 23187 of 2019 dated 08.08.2019.

For Petitioner	:	Ms.R.Hemalatha (in all writ petitions)
For Respondent	:	Mr.Prashanth Kiran Government Advocate (Tax) (in all writ petitions)

COMMON ORDER

Heard the detailed submissions of Ms.R.Hemalatha, learned counsel for the petitioner in all matters and Mr.Prashanth Kiran, learned Government Advocate for the Commercial Taxes Department.

2. Both learned counsel concur on the position that the issue arising in these matters relates to (i) the disallowance of Input Tax Credit (ITC) arising out of the alleged mismatch between the returns filed by the petitioners when compared with the returns and annexures filed by the purchasing / selling third party dealers and (ii) reversal of ITC on the allegations that there has been no actual movement of goods qua the transactions in question.



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3. In regard to the first issue a Bench of this Court in the case of *M/s.JKM Graphics Solutions Private Limited v Commercial Tax Officer* (99 VST 343) had issued certain directions for conduct of verification and assessment in such matters. While some of these directions have been complied with in the present cases, learned counsel concur on the position that there are other conditions that have been set out under Circular No.5 of 2021 dated 24.02.2021 that yet remain to be complied.

4. Hence, and in light of the discussions as aforesaid, the impugned assessments are to be re-done in light of Circular No.5 of 2021, the relevant part of which is set out hereunder:-

"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.



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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



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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.”

5. The second issue relating to movement of goods has been the subject-matter of detailed deliberations in a batch of cases in W.A.No.2607 of 2021, wherein orders have been reserved by the Tax Bench on 01.12.2022. In the interregnum, the Hon'ble Supreme Court has also had occasion to pronounce judgment in the case of *State of Karnataka v M/s Ecom Gill Coffee Trading Private Limited*



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[C.A.No.230 of 2023 dated 13.03.2023] on the same issue, though in the context of the Karntatka Value Added Tax Act.

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6. Thus, there is direction to the assessing authority to await decision in W.A.No.2607 of 2021 and complete the assessments thereafter in light of the judgment of the Hon'ble Supreme Court in *Ecom Gill Coffee Trading Private Limited* (supra) and the decision of the Division Bench within a period of 12 weeks from date of pronouncement of the decision in W.A.No.2607 of 2021.

7. The impugned assessments are set aside and these writ petitions are disposed in the aforesaid terms. No costs. Connected miscellaneous petitions are closed.

15.03.2023

Index:Yes/No
Neutral Citation:Yes
ssm

Note to Registry : Issue on 16.03.2023.

To
The Assistant Commissioner [ST] [FAC]
Bazaar Circle,
Tirupur,
Tirupur District.



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DR. ANITA SUMANTH,J.

ssm

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