IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.15758, 15765, 15768 & 15769 of 2020
and W.M.P.Nos. 19594, 19595, 19596, 19597, 19598, 19599, 19601, 19602 of 2020

Tvl.G.K.Power Expertise Private Limited,
Rep. By its Director,
No.4/141, Uthangal Post,
Cuddalore Main Road,
Vridhachalam. .. Petitioner

vs

1.The Assistant Commissioner (ST) FAC,
Vridhachalam Assessment Circle,
Vridhachalam.

2.The Deputy Commissioner (ST) FAC,
O/o. The Deputy Commissioner of State Tax,
Commercial Taxes Building,
P/B No.43 Sub Jail Road,
Manjakuppam, Cuddalore. .. Respondents

Prayer in W.P.No.15758 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the file of the second respondent in Na.Ka.A5/3138/2019 dated 08.07.2020 and connected proceeding of the first respondent in TIN : 33224424577/2010-11 dated 21.11.2014 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.15765 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the file of the second respondent in Na.Ka.A5/3138/2019 dated 08.07.2020 and connected proceeding of the first respondent in TIN : 33224424577/2011-12 dated

21.11.2014 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.15768 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the file of the second respondent in Na.Ka.A5/3138/2019 dated 08.07.2020 and connected proceeding of the first respondent in TIN : 33224424577/2012-13 dated 22.11.2014 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.15769 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the file of the second respondent in Na.Ka.A5/3138/2019 dated 08.07.2020 and connected proceeding of the first respondent in TIN : 33224424577/2013-14 dated 21.11.2014 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner	:	Mr.S.Kanmani Annamalai (in all writ petitions)
For Respondents	:	Mrs.K.Vasanthamala Government Advocate (in all writ petitions)

COMMON ORDER

Challenge in these writ petitions is to proceedings for assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short, 'Act') for the period 2010 – 2011, 2011 – 2012, 2012 – 2013, 2013 – 2014.

2. The petitioner is a dealer on the file of the respondent / Assessing Officer i.e., the Assistant Commissioner, Vridhachalam

Assessment Circle / R1. Notices were issued proposing certain modifications to the turnover returned by the petitioner, all dated 27.10.2014. Objections were filed by the petitioner on 06.11.2014.

3. Inter alia, the petitioner has responded stating that the purchases, as reported in the show-cause notice comprised purchases of capital goods in respect of which there was no claim for input tax credit since the goods were for their own use and not for sale to customers. Denying all liability to tax, they concluded stating that they were ready to offer any other information required for finalization of the proceedings.

4. Impugned orders of assessment came to be passed on 21.11.2014 for all four years, the assessing authority stating that there was no objection to the proposal made. In addition to levying tax on the entirety of the purchases penalty was also imposed. The petitioner was also not afforded an opportunity of personal hearing.

5. Immediately on receipt of the assessment orders, the petitioner made a representation on 22.12.2014 before the Authority. They reiterated that the entirety of the purchases

constituted fixed assets such as testing equipment, industrial testing meters, transformers, relay panes, and other materials to enable them to execute service orders. Such purchases do not require to be reported.

6. In any event, upon reconciliation of the books of accounts and monthly returns since they had found certain export sales and corresponding purchases not reported in the monthly returns, revised returns along with VAT reconciliation sheet had been filed. They further objected to the equal addition made in the assessment orders and in all, sought a re-assessment of the orders passed and waiver of the demands.

7. Vide that representation, the petitioner has advanced two prayers. The first is for re-assessment based on the fact that the petitioner was not heard in the course of the assessment proceedings and the second offering additional income not captured in the original returns filed. Though they state that revised returns were enclosed, vide confirmation dated 17.03.2023, the assessing states that no such revised returns had been received nor taxes remitted as required under Section 22(6) of the Act.

8. The petitioner made a representation on 01.08.2019 before the second respondent requesting a direction to the first respondent to dispose the petitions filed on 22.12.2014. The second respondent has by way of impugned order dated 08.07.2020, rejected the petitions himself and hence, these writ petitions.

9. The petitioner's representation dated 22.12.2014 does not contain any evidence of tax paid in respect of the enhanced turnover as required as per the proviso to Section 22(6) of the Act. Section 22(6) the proviso thereunder read as follows:-

> *"(6) (a) Any dealer assessed under sub-section(4) may, within a period of thirty days from the date of service of the assessment order, apply to the assessing authority for re-assessment, along with the correct and complete return as prescribed. On such application, the assessing authority shall, if it is satisfied that the failure to submit the return in time was due to reasons beyond the control of the applicant, cancel the assessment made and make a fresh assessment on the basis of the returns submitted:*
> *Provided that no application shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become payable, as the case may be."*

This is a lacunae that the petitioner is bound to remedy.

10. On the other hand, there has been substantial elapse of time from the inception of the original proceedings in October, 2014 till 2020 when the present impugned orders have been passed. Hence the following directions are issued:

> *(i) The petitioner will remit the taxes on the turnover that was omitted to be offered along with interest for the delay within two weeks from the date of receipt of this order.*
>
> *(ii) Upon condition that the amount as above is so remitted, the objections of the petitioner filed on 22.12.2014 shall be taken into account as though they constitute an application for rectification under Section 84 of the Act, and disposed within a period of four weeks thereafter.*

11. If the taxes as per enhanced turnover is not remitted within two weeks as per in direction (i) above, the second direction needs no compliance.

14. With this, these writ petitions stand disposed. No costs. Connected miscellaneous petitions are closed.

17.03.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

1.The Assistant Commissioner (ST) FAC,
Vridhachalam Assessment Circle,
Vridhachalam.

2.The Deputy Commissioner (ST) FAC,
O/o. The Deputy Commissioner of State Tax,
Commercial Taxes Building,
P/B No.43 Sub Jail Road,
Manjakuppam, Cuddalore.

DR. ANITA SUMANTH,J.

ssm

W.P.Nos.15758, 15765,
15768 & 15769 of 2020

17.03.2023