



W.P.Nos.11916 of 2020 batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 05.03.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY

**W.P.Nos.11916, 11921, 11923, 11924, 11926, 11930, 11933, 11934 of
2020 &
WMP Nos.14641,14642,14644,14645,14648,14651,14654 & 14657 of
2020**

Tvl. Sri Vigneswara Granites,
Represented by its Partner,
Smt. Shanthi Selvaraj,
No.8/372, Mumoorthi Nagar South,
Pooluvapati Post,
Tiruppur-641 602.

... Petitioner

vs

The Assistant Commissioner (ST),
Tiruppur (Rural-I) Assessment Circle,
Tiruppur.

... Respondent

PRAYER in W.P.No.11916 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2007-08 dated 10.03.2020 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.11921 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2008-09 dated 10.03.2020 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.11923 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2009-10 dated 10.03.2020 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.11924 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2010-11 dated 10.03.2020 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.11926 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2011-12 dated 10.03.2020 and quash the same as being without jurisdiction and authority of law and contrary to the



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principles of natural justice.

PRAYER in W.P.No.11930 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2012-13 dated 10.03.2020 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.11933 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2013-14 dated 10.03.2020 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.11934 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the files of the respondent in TIN 33592385094/2014-15 dated 10.03.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

In all WPs

For Petitioner : Mr.T.Ramesh & P.Rajavelu

For Respondent : Mr.C.Harsha Raj
Additional Govt. Pleader (Taxes)



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COMMON ORDER

In these writ petitions, assessment orders under the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT Act) in respect of assessment years 2007-08 to 2014-15 are under challenge.

2. The petitioner is a partnership firm represented by Smt. Shanthi Selvaraj. Returns were filed by the petitioner for each of the above mentioned assessment years. Pursuant to an inspection undertaken by the enforcement wing officials, the petitioner received a notice dated 12.08.2016. Such notice dealt with about five defects. The focal point of challenge is defect No.3 relating to freight not reported and sold with under value. Upon receipt of the above mentioned notice, the petitioner submitted a reply dated 30.08.2016. In the reply, the alleged defect relating to freight was responded to by stating that freight charges incurred by the petitioner were accounted for in the books of accounts and that all payments were made by account payee cheques. It was further stated that the cost of



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purchase includes the cost of materials, labour charges and delivery charges at site. The petitioner contended that the computation in respect of freight charges in the notice under reply is not based on any material evidence, but entirely based on assumptions and presumptions. This was followed by a revised notice on 27.08.2018. Pursuant to a hearing, the orders impugned herein were issued on 05.06.2020.

3. Learned counsel for the petitioner challenges the impugned assessment orders on two grounds. The first ground of challenge is that the re-assessment proceedings are barred by limitation as regards assessment years 2007-08 to 2010-11. By pointing out that the limitation period is six years in terms of Section 27 of the TNVAT Act, learned counsel submits that such proceedings could not have been initiated up to assessment year 2010-11. In this connection, he relies upon the revised notice dated 27.08.2018. As regards assessment year 2014-15, learned counsel submitted that there was a computational error in the assessment order, and, therefore, a



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rectification petition was filed. Although the computational error was rectified by order dated 05.06.2020, learned counsel submitted that the said order also proceeded on the basis of information gathered from the Internet and not on the basis of credible information indicating suppression of freight charges by the petitioner. Therefore, he submits that proceedings relating to assessment orders 2014-15 are also vitiated for the same reasons.

4. The next contention of learned counsel was that the determination of alleged suppression of freight charges is completely unreasonable. By referring to the notice dated 12.08.2016, he points out that the freight charges per consignment with regard to freight from Gujarat was fixed at Rs.1,00,000/-. Similarly, he pointed out that freight charges per consignment from Rajasthan was fixed at Rs.80,000/-. By referring to the impugned order, learned counsel pointed out that the petitioner stated that he had received about 13 consignments from Gujarat of a value of less than Rs.50,000/- per consignment. Similarly, he had received six consignments of a value



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between Rs.50,000/- and Rs.1,00,000/-. By pointing out that the consignment value was much lower than the freight charges attributed by the respondent, learned counsel asserted that the conclusions recorded in the assessment order are absurd and cannot be sustained. He further submitted that the respondent should have a reasonable basis for re-assessment when such re-assessment is based on alleged suppression with intent to evade taxes by the petitioner. He points out that the assessing officer relied on information gathered from the Internet to fix the freight charges and compute the alleged suppression of freight charges by the petitioner. Since findings were recorded without relying on credible material, learned counsel submits that these assessment orders are liable to be quashed.

5. Mr.C.Harsha Raj, learned Additional Government Pleader, made submissions in reply and to the contrary. With regard to limitation, learned counsel referred to sub-section 2 of Section 22 of the TNVAT Act and pointed out that with regard to assessment years



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2006-07 to 2010-11, deemed assessments occurred on 30.06.2012. If the six year period is computed from 30.06.2012, learned counsel submits that the proceedings in respect of all the assessment years were within the period of limitation since such proceedings were initiated pursuant to notice dated 12.08.2016. He also points out, in this regard, that the main basis for re-assessment was the notice dated 12.08.2006 and not the revised notice dated 27.08.2018.

6. On the merits, Mr.C.Harsha Raj contended that the assessment orders were issued on best judgment basis because the petitioner failed to place on record requisite documents to substantiate that only the disclosed amounts were incurred towards freight charges. As regards assessment year 2014-15, Mr.Harsha Raj, learned Additional Government Pleader, submitted that the suppressed turnover had been determined as Rs.59,31,520/- in the notice dated 12.08.2016. Based on documents submitted by the petitioner, he submits that this was reduced to Rs.31,01,417/- and that after giving credit to the disclosed sum of Rs.17,83,766/, tax was



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computed on the said sum at Rs.14.5% and the petitioner was directed to pay a sum of Rs.1,91,059/- along with penalty thereon.

Mr.Harsha Raj points out that the petitioner should have filed similar rectification petitions in respect of other assessment years, but chose not to do so. He further submitted that the dispute turns on questions of fact and that such dispute should be raised before the appellate authority and not before this Court. Hence, learned counsel submits that all these writ petitions are liable to be rejected.

7. By way of rejoinder, Mr.Ramesh, learned counsel, submits that re-assessment proceedings are not to be undertaken on best judgment basis, except where no returns are filed. He next submitted that the reply of the petitioner was not taken into consideration while issuing the impugned assessment orders and that the respondent did not provide any evidence of actual increased outflow of funds towards freight charges. Therefore, he reiterated that the impugned orders call for interference.



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WEB COPY 8. The first issue that falls for consideration is whether proceedings relating to assessment years 2007-08 to 2010-11 are barred by limitation. Under Section 27(1) of the TNVAT Act, the limitation period in respect of escaped assessment is six years from the date of assessment. Section 22(2) deals with deemed assessment. The principal clause prescribes that there will be deemed assessment on the 31st October of the succeeding year to the relevant assessment year. The proviso thereto deviates from the date of deemed assessment in the principal clause by prescribing that the date of deemed assessment shall be 30.06.2012 in respect of assessment years commencing from 2006-07 and ending with the assessment year 2010-11. The assessment years 2007-08 to 2010-11 are relevant for the purpose of these cases. All these assessment years fall within the scope of the proviso to sub-section 2 of Section 22. The contention of Mr.Ramesh, in this regard, that the proviso is inapplicable cannot be countenanced because both the principal clause and the proviso deal with deemed assessment and the entire sub-section applies in all



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cases where assessment orders were not issued. Admittedly, assessment orders were not issued in these cases pursuant to returns being filed. Since the proviso applies to these cases, as regards assessment years 2007-08 to 2010-11, limitation should be computed from 01.07.2012. If so computed, the assessments relating to the above mentioned orders are within the six year period of limitation because re-assessment proceedings were initiated pursuant to notice dated 12.08.2016.

9. As regards the challenge on merits, learned counsel for the petitioner pointed out that the petitioner had paid freight charges through account payee cheques and that such payments were duly reflected in the books of accounts of the petitioner. In the impugned assessment orders, the assessing officer has applied a flat rate per consignment based on the State from which the consignments were delivered to the petitioner. For instance, as regards the State of Gujarat, the freight charges per consignment was fixed at Rs.1,00,000/-. As regards the State of Rajasthan, it was fixed at



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Rs.80,000/-. The assessment orders also record the petitioner's contention that about 13 consignments from Gujarat were of the value below Rs.50,000/- per consignment. Effectively, the freight charges determined by the assessing officer were twice the value of the consignment as regards those 13 consignments. Similarly, the petitioner has pointed out that six consignments were below the value of Rs.1,00,000/-. Once again, the freight charges determined by the assessing officer is slightly more than the value of consignment as regards these six consignments. These illustrations demonstrate that the assessing officer did not determine the alleged suppressed freight charges on a rational basis. Hence, the assessment orders as regards assessment years 2007-08 to 2013-14 warrant interference.

10. Since the fact situation relating to assessment year 2014-15 differs in some respects, the same is discussed separately. With regard to this assessment year, the petitioner had filed a rectification petition which was disposed of by order dated 05.06.2020. In the notice dated 12.08.2016, the suppressed turnover with regard to



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freight was specified as Rs.89,31,520/-. As against this, in the rectification order, the assessing officer has determined the suppressed freight charges as Rs.13,17,651/- and computed tax on that basis. It also appears that some additional factors were taken into consideration in the rectification order. However, as in the case of other assessment years, the principal basis for comparison appears to be information taken from the Internet. It should also be noticed that the assessing officer has not indicated the nature of information derived from the Internet and whether such information related to the freight charges levied by other transportation companies. In those circumstances, the assessment order and rectification order relating to assessment year 2014-15 also call for interference.

11. For reasons set out above, the impugned assessment orders are quashed and these matters are remanded for re-consideration. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh assessment orders within a maximum period of three months



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from the date of receipt of a copy of this order. Consequently,
connected miscellaneous petitions are closed. No costs.

05.03.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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To

The Assistant Commissioner (ST),
Tiruppur (Rural-I) Assessment Circle,
Tiruppur.



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SENTHILKUMAR RAMAMOORTHY J.

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