IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM

THE HON'BLE **MR JUSTICE C. SARAVANAN**

W.P.No.14202 of 2022
and
WMP.No.13437 of 2022

A-Vone Building Materials
Represented by its Partner,
S.Habib Rahman,
36, Bharathy Road,
Cuddalore – 607 001. ...Petitioner

Vs.

The State Tax Officer
Cuddalore Town ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records leading to the issuance of assessment order in TIN:33594381839/2013-14 dated 05.04.2022 by the Respondent herein.

For Petitioner	:	Mr.Adithya Reddy
For Respondent	:	Mr.C.Harsha Raj Additional Government Pleader

O R D E R

Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mr.C.Harsha Raj, learned Additional Government Pleader for the respondent.

2. It is the second round of litigation before this Court. Earlier also, the petitioner has challenged the assessment order dated **14.12.2020** for the Assessment Year 2013-14 in WP.No.3168 of 2021. By an order dated **16.02.2021**, the order dated **14.12.2020** was set aside and the case was remitted back to the respondent. The dispute pertains to purported purchase of stocks from dealers outside the State as a result of which the Department has denied the benefit of **Section 3 (4)** of the **Tamil Nadu Value Added Tax Act, 2006**.

3. It is the case of the petitioner that that the petitioner had no dealings of transactions from the dealers mentioned in the impugned orders as detailed below:-

Sl. No.	Consignor Name/Address	Invoice No. & date	Value
1.	Sri Sakthi Stores/34460017185	949430868/02.09.2013	42755.00
2.	Subbu Suresh Traders/34480001363	94943178/02.09.2013	4573.00
3.	Subbu Suresh Traders/34480001363	949431783/02.09.2013	99929.00
			147257.00

4. Learned counsel for the respondent on the other hand would submit that the informations were gathered based on the data gathered from the check-post

and the notices were issued to the petitioner which preceded the earlier order dated **14.12.2020** and the impugned order dated **05.04.2022**. It is therefore, submitted that the impugned order does not warrant any interference and submits that the writ petition to be dismissed.

5. I have considered, the arguments advanced by the learned counsel for the petitioner and learned counsel for the respondent.

6. However, learned counsel for the petitioner placed reliance on **G.K. Chemicals Vs. State of Tamil Nadu and Ors.** dated **10.08.2007** in W.P.(MD).No.6489 of 2007. I am of the view that the said decision cannot be applied to the facts of the case, as there, details of the suppliers were not available to the petitioner therein.

7. However, in the present case, the names of the dealers from whom the petitioner had purchased goods under inter-state sale, have been declared in the notice and the orders that were passed on **14.12.2020** and in the impugned order dated **05.04.2022**. At the same time it is also noticed that it is the specific defence of the petitioner that the petitioner had no inter-state purchase to warrant

denial of the payment under **Section 3 (4)** of the **Tamil Nadu Value Added Tax Act, 2006**.

8. I am of the view that it is for the Department to get a report from the counter-part from Pondicherry Commercial Tax Department as to whether indeed, the supplies were made to the petitioner from the State of Pondicherry under inter-state. As it is the defenitive case of the petitioner that the petitioner had no details. This was inconsonance with the orders passed by this Court in **JKM Graphics Solutions Pvt. Ltd.** reported in [(2017) 99 VST 343 (Mad)] pursuant to which **Circular No.5 of 2021** dated **24.02.2021** was issued by the Commissioner of Commercial Taxes wherein para Nos.3.3.3 and 3.3.4 are clarified as under:-

> "*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 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 with provisions of the TNVAT Act, 2006. The result of such action shall be reported to the Original Assessing Authority."

9. Although, it is for verification intra from one range to another range and one circle to another circle, the principle followed in the circular pursuant to the orders of this Court can be applied to the facts of the case. Therefore, it is for the Department to get a report from the counter-part from the Pondicherry Commercial Tax Department and thereafter pass a fresh order. Under these circumstances, the impugned order is set aside and the case is remitted back to pass fresh order on merits after obtaining a report from the counter-part. This exercise is expected to be completed preferably within a period of six (6) months from the date of receipt of copy of this order. This writ petition stands disposed of. No costs. Connected Miscellaneous Petition is closed.

25.10.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No

nst

To:

The State Tax Officer
Cuddalore Town

C.SARAVANAN, J.

nst

W.P.No.14202 of 2022
and
W.M.P.No.13437 of 2022

25.10.2024