IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.26378, 26380, 26383, 26384 and 26387 of 2021
and
W.M.P.Nos.27847, 27848, 27849, 27852 and 27853 of 2021

Madras Engineering Industries Private Limited,
Represented by its Director Priya Sriram,
No.C-6, Ambattur Industrial Estate,
Ambattur, Chennai - 600 058. ... Petitioner in all W.Ps

Vs.

1.The Assistant Commissioner (CT),
Anna Nagar Assessment Circle,
1-B Lakshmipuram 2nd Street,
Villivakkam, Chennai – 600 049.

2.The Assistant Commissioner (ST),
Ambattur Industrial Estate Assessment Circle,
Room No.327, 3rd Floor Veterinary Hospital Road,
Nandanam, Chennai – 600 035.

3.The Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005. ... Respondents in all W.Ps

Prayer in W.P.No.26378 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the Second Respondent herein in TIN/33861320031/**2010-2011** dated **27.09.2021** quashing the same.

Prayer in W.P.No.26380 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the Second Respondent herein in TIN/33861320031/**2011-2012** dated **17.09.2021** quashing the same.

Prayer in W.P.No.26383 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the Second Respondent herein in TIN/33861320031/**2012-2013** dated **08.10.2021** quashing the same.

Prayer in W.P.No.26384 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the Second Respondent herein in TIN/33861320031/**2013-2014** dated **08.10.2021** quashing the same.

Prayer in W.P.No.26387 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the Second Respondent herein in TIN/33861320031/**2014-2015** dated **08.10.2021** quashing the same.

For Petitioner (In all W.Ps)	:	Ms.Vishnu Priya for Mr.N.Inbarajan
For Respondents (In all W.Ps)	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate

COMMON ORDER

These Writ Petitions are of the year 2021.

2. This is the second round of litigation before this Court.

3. Earlier, the petitioner had suffered five Assessment Orders for the Assessment Years 2010-2011 to 2014-2015 on 07.02.2017. The dispute in this case pertains to wrong availment of Input Tax Credit pursuant to the mismatch noticed between the Input Tax Credit availed by the petitioner and the documents that were filed during the assessment.

4. This Court by an Order dated 16.03.2017 in W.P.Nos.6381 to 6386 of 2017 had set aside the Assessment Orders dated 07.02.2017 for the aforesaid Assessment Years and remitted the case back to the respondents to pass a fresh order *de novo*. Pursuant to the same, the Impugned Assessment Orders have been passed wherein the Input Tax Credit wrongly availed has been affirmed.

5. Apart from the above, penalty under Section 27(4) of the Tamil Nadu Value Added Tax (TNVAT) Act as it stood prior to 29.01.2016 by Section 11

of the Tamil Nadu Value Added Tax (Second Amendment) Act, 2015 (No.13 of 2015) has been imposed at 15%.

6. Learned counsel for the petitioner submits that the tax as also penalty has been paid under protest and therefore submits that the imposition of penalty under Section 27(4)(i) of TNVAT Act as it stood during the period in dispute has been wrongly imposed. It is further submitted that there is no scope for imposing penalty under Section 27(4) of TNVAT Act either before the amendment or after the amendment as there was no useful suppression of fact on the part of the petitioner in availing Input Tax Credit and that the discrepancy has arisen only on account of the information gathered by the Department and that the amount that was earlier sought to be levied was also drastically reduced in the Impugned Assessment Orders.

7. Learned Government Advocate for the respondents on the other hand submits that there is no merits in the present writ petition.

8. Learned Government Advocate for the respondents also referred to Circular No.5/2021 dated 24.02.2021 issued by the Principal

Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai, wherein it has been clarified that Paragraph 3.3.3 and 3.3.4 of Circular No.5/2021 of the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai has been followed.

9. Learned Government Advocate for the respondents submits that the conditions of the above circular was complied as cross-verification was carried out as per Paragraph 3.3.3 and 3.3.4 of the above Circular.

10. In this connection, the learned Government Advocate for the respondents has referred to the communications between the Assistant Commissioner (ST), Ambattur Industrial Estate Assessment Circle, Nandanam, Chennai and the Assistant Commissioner (ST), Aminjikarai Circle, F 50, Anna Nagar East, 1st Avenue, Chennai, before confirming the demand in the Impugned Assessment Orders and submits that imposition of penalty cannot be interfered with.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

12. The dispute has arisen on account of mismatch as a result of which, the Input Tax Credit was sought to be denied to the petitioner. Earlier, on 16.03.2017 it was subject matter of challenge before this Court in W.P.Nos.6381 to 6386 of 2017. This Court had taken note of the difficulties faced by the assessee in **M/s.JKM Graphics Solutions Private Limited, Chennai** Vs. **The Commercial Tax Officer, Vepery Assessment Circle, Chennai and others**, in W.P.No.105 of 2016 dated 01.03.2017, (2017) 99 VST 343 (Mad.)., wherein, this Court had given certain directions pursuant to which, Circular No.5/2021 bearing Ref.No.LVV10/12521/2016 dated 24.02.2021 was issued.

13. Paragraphs 3.3.3 and 3.3.4 of the above Circular read as under:-

3.3.3	**3.3.4**
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	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

3.3.3	**3.3.4**
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.	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.

14. A reading of Section 27(4) of TNVAT Act indicates that both before amendment and after amendment there is no scope for any discretion. The petitioner has availed Input Tax Credit which was sought to be denied based on the information gathered by the Commercial Tax Department from the checkpost and web portal.

15. The informations gathered were not correct and therefore the Court intervened and gave its direction in **M/s.JKM Graphics Solutions Private Limited's case** (cited supra).

16. Although Sub-Section 4 to Section 27 of TNVAT Act leaves no scope for discretion in the matter of levy of penalty, this Court is of the view that the present case cannot be strictly fit into the penalty as the tax itself has been confirmed pursuant to information gathered from checkpost which is not conclusive of mistakes.

17. The Input Tax Credit has been confirmed only pursuant to the exercise carried out by the Assessing Officer pursuant to Order dated 16.03.2017 in W.P.Nos.6381 to 6386 of 2017 in the light of Circular No.5/2021 bearing Ref.No.LVV10/12521/2016 dated 24.02.2021.

18. The petitioner has also paid the disputed tax and is only confining the issue regarding the levy of penalty.

19. Since this case cannot be strictly covered within the purview of Section 27(4) of TNVAT Act although there has been determination under Section 27(2) of TNVAT Act, imposition of penalty cannot be justified. Under these circumstances, the Impugned Assessment Orders dated 07.02.2017 are partly set aside insofar as the imposition of penalty on the petitioner is concerned.

20. These Writ Petitions are allowed to the extent with consequential relief. No costs. Connected Writ Miscellaneous Petitions are closed.

25.10.2024

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

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C.SARAVANAN, J.

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To

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