



WEB COPY



WA No. 3020 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 3020 of 2023

Tvl. R.T. Traders
Represented by Propreitor
Mr. R. Thufail Ahmed
42, Upstairs Khazi Street
Pernambut – 635 810
Vellore District.

... Appellant

Versus

The Commercial Tax Officer (Main)
Gudiyatham (West)
Gudiyatham – 632 301.

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 30.07.2018 made in W.P. No.19222 of 2018.

For Appellant : Mr. Manoharan Sundaram for
Mr. Adithya Reddy

For Respondent : Mr. M. Venkateswaran
Special Government Pleader (Taxes)



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J U D G M E N T

[Judgment of the Court was delivered by R. MAHADEVAN, J]

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This Writ Appeal has been filed to set aside the order of the learned Judge dated 30.07.2018 passed in W.P. No. 19222 of 2018.

2.The facts of the case in brief are as follows:

The writ petitioner is the appellant herein. The appellant is a Registered Dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The appellant is aggrieved by the revision of assessment made by the respondent for the assessment year 2014-15 stating that on cross verification of the details through the Departmental Website, certain purchases on which the appellant claimed Purchase Input Tax Credit, had not been reflected in Annexure II of the sellers, coupled with levying interest under Section 27(3) of the Act. Since the appellant had not filed their objections, the respondent passed the order dated 28.12.2016 for the assessment year in question, which was challenged in W.P. No. 19222 of 2018. The learned Judge, considering the submissions made on either side, remanded the matter to the respondent and directed the



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appellant to file their objections before the respondent treating the order as show cause notice and on receipt of the objections, the respondent was directed to afford opportunity of personal hearing to the appellant and to redo the assessment on condition that the appellant has to pay 15% of the tax demanded. Aggrieved by the said order, the appellant has preferred the present appeal.

3. According to the learned counsel for the appellant, the assessment order was passed by the respondent on the basis that there is alleged mismatch of purchases between the returns filed by the appellant and the other dealers. The learned counsel further submitted that it is settled law that if there is a mismatch in the Departmental Website, the assessing authority must conduct two way enquiries and the Purchasing Dealer should not be punished for sellers' default. It is also submitted that no such enquiries were conducted and no opportunity of cross examination was granted to the appellant and relied upon various Judgments of this Court, in particular the Judgment of this Court in *JKM Graphics Solutions Pvt., Ltd., v. Commercial Tax Officer [(2017) 99 VST 343 (Mad.)]* to substantiate that



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default of a selling dealer is not a ground to demand tax from a purchasing dealer. Hence, it is submitted that though the learned Judge was pleased to remand the matter by giving opportunity to the appellant to participate in the assessment proceedings, he ought not to have imposed a condition to pay 15% of the disputed tax demand. Stating so, the learned counsel prayed for setting aside the order of the learned Judge and for allowing this appeal.

4. On the other hand, the learned Special Government Pleader appearing for the respondent submitted that the appellant ought to have filed their objections to the Revision Notice dated 06.10.2016 issued by the respondent earlier, but they failed to do so and hence, the respondent cannot be found fault with, in passing the order dated 28.12.2016 impugned in the writ petition, confirming the proposal made in the said Revision Notice in the absence of any objections. Therefore, the order of the learned Judge imposing the condition to deposit 15% of the disputed tax demand, does not require any interference in the hands of this Court.



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5. Heard the learned counsel on either side and perused the records carefully and meticulously.

6. The order of assessment passed by the respondent was challenged in the writ petition by the appellant / assessee. The learned Judge, after having considered the submission made by the learned counsel for the appellant / assessee, has granted one opportunity to the assessee, however subject to a condition that the assessee has to deposit 15% of the tax demanded, by the order impugned herein. According to the learned counsel for the appellant, when the learned Judge is inclined to remand the matter to the respondent for re-consideration, he ought not to have imposed such condition on the appellant, which is illegal and contrary to law.

7. This court finds merit in the contention so raised on the side of the appellant / assessee. The issue involved herein had already been considered by a Division Bench in *Havea Handles & Components Pvt. Ltd v. Assistant Commissioner (CT) (FAC), Royapettah II Assessment Circle, Chennai [WA Nos. 867 to 869 of 2014 dated 04.07.2014]* and it was held as follows:



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"6.It has to be pointed out, at this stage, that once it has been found that the orders impugned in the writ petitions are unsustainable on account of violation of principles of natural justice, it is wholly unnecessary to impose any condition while remitting the matter for fresh adjudication and in the considered opinion of this court, the direction given to the appellant / writ petitioner to deposit 10% of the tax amount as claimed in the demand notice, as a condition precedent to enquire into the matter, is unsustainable and the said portion of the order is liable to be set aside."

8.Following the above said judgment, in an identical case in *M/s.R.P.S & Co. v. Assistant Commissioner (ST)(FAC), Erode, [WA. No. 175 of 2022 dated 04.02.2022]*, this court, in which, one of us (RMDJ) was a member, has set aside the pre-condition imposed on the appellant therein to deposit 30% of the tax amount for consideration of the matter afresh by the assessing authority, observing that the same was certainly unwarranted.

9.In the light of the earlier decisions as referred to above, this Court is inclined to set aside the order of the learned Judge insofar as directing the appellant / assessee to deposit 15% of the demanded tax as a condition precedent for re-doing the assessment by the authority and the same is accordingly, set aside. Consequently, the appellant / assessee is directed to file objections to the order passed by the respondent treating the same as show cause notice as directed by the learned Judge, within a period of two



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weeks from the date of receipt of a copy of this judgment. On receipt of the objections, the respondent shall afford opportunity of personal hearing to the assessee and re-do the assessment and pass appropriate orders, on merits and in accordance with law.

10.The writ appeal is allowed to the extent as indicated above. No costs.

(R.M.D.,J) (M.S.Q.,J)
12.03.2024

ay

Index:Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

The Commercial Tax Officer (Main)
Gudiyatham (West)
Gudiyatham – 632 301.



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