BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.22936 of 2024
and
W.M.P(MD)No.19460 of 2024

M/s.ARASPVPV Automobiles Private Limited,
Represented by its Director,
No.10-D, Trivandrum Road,
Palayamkottai,
Tirunelveli,
Tamil Nadu-627 002. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Office of the Assistant Commissioner (ST),
Palayamkottai Assessment Circle,
Palayamkottai Range,
PAPJM Building Annex,
Tamil Nadu-627 002. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, call for the records the impugned order of reassessment in TIN No.33535567600/2014-15, dated 08.05.2024 from the files of the respondent herein, quash the same, pass such other order or orders as this Court.

For Petitioner : Mr.Aparna Nandakumar

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This is the second round of litigation. The present writ petition is filed challenging the impugned order, whereby the claim of Input Tax Credit was rejected on the basis of the web report. As per the web report, it was found that the petitioner has not disclosed purchases to the tune of Rs.1,75,64,129/-.

2. It is submitted that the impugned order has been passed without complying with the procedure stipulated in circular No.5/2021, dated 24.02.2021 which was made pursuant to the direction of this Court in the case of ***JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle*** reported in ***(2017) 99 VST 434 (Mad.)***. It is further submitted that the petitioner's bank account had been attached and a sum of Rs.11,00,000/- which was lying with the bank had also been recovered.

3. Following the issuance of the above circular, this Court consistently has set aside the orders wherein the claim of Input Tax Credit has been rejected on the basis of web report with a view to pass fresh orders in compliance with the procedure laid down in the said circular.

4. The learned Counsel for the petitioner relied upon the order of this Court in W.P.No.4390 of 2019, dated 26.08.2022. The relevant portion of the order is extracted hereunder:

"5. In such circumstances, the procedure set out in the Circular of the Commissioner in Circular No.5 dated 24.10.2021 the relevant portion of which has been extracted below, has not been followed:

"Circular No.5/2021

LW10/12521/2016

Office of the Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.
dated: 24.02.2021

Circular

Sub:	*TNVAT Act 2006 – Assessment made on the basis of computed generated mis-match report – Hon'ble Court direction in the case of JKM Graphics – Procedure to deal with such cases – circular issued – Regarding.*
Ref:	*1. The orders of the Hon'ble High Court in W.P.No. 105/2016 dated 01.03.2017. 2. The orders of the Hon'ble High Court in Review Petition No.173 of 2018 in W.P.No.5007 of 2016 dated 12.02.2021.*

The Hon'ble High Court of Madras in a batch of cases involving in denial of input tax credit or arising of tax liability due to purchase and sales suppression on the basis of the computer generated mismatch report from the Annexure and II of the returns of the purchaser vis-a-vis seller, has directed that the Commissioner of Commercial Taxes to evolve / devise a mechanism / procedure to exclusively deal with such cases (herein after called as mismatch) in a holistic manner and thus resolve / enable resolution of all such issues under TNVAT Act in its order 1 cited.

. . . .

3. Hence the following procedure is evolved for all the pending and future litigations pertaining to mis-match issues.

<u>3.1 Broad category of mis-match cases</u>

The mismatch between the purchasing and selling dealer in Annexure I and Annexure II of Form 1 return, prescribed under TNVAT Act, filed by them may fall in the following categories:

** ITC claimed by the purchaser does not match with the output tax due paid/payable by the seller; or*

** Mismatch of purchase/ sales transactions resulting in purchase and/or sales suppression; or*

** Mismatch of transactions because of a dealer whose registration To anolem certificate has been cancelled,*

** On verification of check post data, certain transactions are not reported, to .*

. . .

<u>3.3 Procedure to be followed in the cases of Mis-match</u>

3.3.1 The assessing authority who has raised the dispute of mismatch (herein after called as Original Assessing Authority) shall list out all such pending mismatch cases in respect of his/her assessment circle and report to the DC/JC as well as in the next statistics to be furnished after this circular comes into effect, for which suitable table is being prescribed and thereafter the report the progress every month.

3.3.2 The Original Assessing Authority shall undertake verification mismatch transaction report in the department intranet website (tnvat.gov.in) with reference to the data available at both the ends i.e., buyer and seller. On verification of the data, if the Original Assessing Authority could reconcile the mismatch and finds that the mismatch is due to clerical or inadvertent error the Assessing Authority shall pass appropriate orders dropping further action.

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 sing 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.

3.3.5 The Assessing Authority should issue show cause notice along with all the connected to the assessment seeking objections. On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing). The assessing officer shall grant adequate *opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu, the Assessing Authority can summon the other end dealer and on request, a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days.*

. . . .

Principal Secretary/

Commissioner of Commercial Taxes"

6. For the purpose of complying with the procedure set out above, the petitioner will appear before the Assessing Officer on Friday the 2 nd of September, 2022 when he shall be furnished a copy of the invoices. Let adequate opportunity be given to the petitioner in regard to the cross-verification of the selling dealers and an order of assessment passed within a period of four weeks from 02.09.2022.

5. The learned Additional Government Pleader for the respondent would submit that they would redo the assessment in accordance with the procedure stipulated in Circular No.5 of 2021 dated 24.10.2021.

6. Recording the above submission and following the earlier orders of this Court, this Court is inclined to direct the petitioner to appear before the assessing officer on **21.10.2024** along with the additional reply and document if any. The respondent shall proceed to complete the assessment in accordance with the mechanism / procedure laid down in the above circular.

7. In view of the same, the impugned order is set aside and the petitioner's bank attachment shall be lifted forthwith. If the petitioner for any reason does not appear on the said date i.e., 21.10.2024, the impugned order shall stand revived. The writ petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

25.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

Note : Issue order copy on 01.10.2024.

To

The Assistant Commissioner (ST),
Office of the Assistant Commissioner (ST),
Palayamkottai Assessment Circle,
Palayamkottai Range,
PAPJM Building Annex,
Tamil Nadu-627 002.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)No.22936 of 2024

25.09.2024