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W.P.Nos.28370 & 28372 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2022

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. Nos.28370 & 28372 of 2019 and
W.M.P. Nos.28059 & 28060 of 2019

M/s.Gharpure Engg. & Construction (Pvt) Ltd.,
No.34, Bilal Estate, Ukkadam South
Coimbatore.
Rep. by its Manager

..Petitioner in
both WPs

Vs

Assistant Commissioner (ST)
Big Bazaar Assessment Circle
Coimbatore

.. Respondent in
both WPs

PRAYER in W.P. No.28370 of 2019: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorari calling for the records of the respondent in his proceedings leading to passing of the revised assessment order vide TIN/33811842743/2013-14 dated 12.03.2019, quash the same insofar as disallowance of ITC of Rs.25,27,951/- (mismatch between selling and buying dealer returns) and disallowance of ITC of Rs.32,00,222/- relating to difference in the ITC mentioned in Form WW &



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monthly returns.

PRAYER in W.P. No.28372 of 2019: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorari calling for the records of the respondent in his proceedings leading to passing of the revised assessment order vide TIN/33811842743/2013-14 dated 19.03.2019 and quash the same.

For Petitioner : Mr.K.M.C. Arun Mohan
for M/s.S.Sathyanarayanan

For respondents : Mrs.K.Vasanthamala
Government Advocate

ORDER

Heard Mr.K.M.C.Arun Mohan, learned counsel for petitioner and Mrs.K.Vasanthamala, learned Government Advocate for Commercial Taxes Department.

2. The challenge is to an order of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period 2013-14. The substantial addition to turnover is on the ground of mismatch of particulars between the details contained in the returns filed by the petitioner as compared with the annexures filed by the



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selling/purchasing dealers.

WEB COPY 3. This very issue of mismatch has engaged the attention of this court and after a prolonged hiatus, the Special Commissioner/Commissioner of Commercial Taxes Department has issued Circular No.5 dated 24.02.2021 addressing the issue of mismatch. A procedure has been put in place to deal with the issues of mismatch involving a detailed examination and reconciliation of particulars using the good offices of the Assessing Officer of the concerned dealers as well as the selling/purchasing dealers.

4. The procedure, as relevant to deal with this issue, is extracted below:

3.3 Procedure to be followed in the cases of Mis-match

'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



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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



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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.

3.3.6 The Territorial Deputy Commissioners shall oversee the work and ensure that the verification reports are promptly be sent and the cases are finalized without any undue delay.'

5. Let the procedure set out in the aforesaid circular be applied to the present case as well. The impugned orders of assessment are set aside to enable both parties i.e. assessee as well as department to engage in finalisation of the issue in line with circular No.5. Let the petitioner be heard, the procedure as set out in the circular be followed scrupulously and orders of assessment be passed within a period of eight weeks from the date of receipt of a copy of this order.



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Asr

6. Writ petitions are disposed of on the above terms. However, there shall be no order as to costs. Consequently, connected writ miscellaneous petitions are closed.

19.07.2022

Index : Yes/no
Internet : Yes/no
Asr

To

Assistant Commissioner (ST)
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