IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.10.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.A.No.1326 of 2015,
W.P.Nos.18546 & 18547 of 2015
and
M.P.Nos.1 of 2015 (3 petitions)

M/s.Edu Smart Services (P) Ltd.,
represented by its Director,
No.454/2 & 3, G.N.T. Road,
Puzhal, Chennai 600 066.

Appellant/Petitioner in WA 1326/15, 18546/15 & in 18547/15

vs.

The Assistant Commissioner(CT)
Madhavaram Assessment Circle,
No.170, G.N.T.Road,
Puzhal, Chennai 600 066.

Respondent in all the three cases.

Writ Appeal against the order dated 9.7.2015 passed in W.P.No.20478 of 2015.

Prayer in WP.20478/15:To issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN 33621086393/2011-2012 and quash the impugned order dt 18.5.2015 as passed contrary to the principles of natural justice and also contrary to the provisions of the TNVAT Act and further direct the respondent to consider the petitioners objections dt 24.2.2015 27.3.2015 and 8.4.2015 filed along with the documentary evidences and pass a fresh assessment order in accordance with law after giving reasonable opportunity to the petitioner.

Writ Petition No.18546 of 2015 filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the impugned proceedings of the respondent in CST No.1003704/2012-2013 and quash the impugned order dated 20.5.2015 and further direct the respondent to consider the petitioner's objections dated 27.3.2015 and 8.4.2015 and pass a fresh assessment order adjusting the excess input tax credit to the tax payable under the CST Act for the Assessment Year 2012-2013.

Writ Petition No.18547 of 2015 filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the impugned proceedings of the respondent in TIN 33621086393/2012-2013 and quash the impugned order dated 21.5.2015 as passed contrary to the principles of natural justice and also contrary to the provisions of the TNVAT Act and to further direct the respondent to consider the petitioner's objections dated 24.2.2015 27.3.2015 and 8.4.2015 filed along with the documentary evidences and pass a fresh assessment order in accordance with law after giving reasonable opportunity to the petitioner.

For appellant : Mr.P.Rajkumar
(in all the Cases)

For Respondent : Mr.V.Haribabu, AGP (T)
(in all the Cases)

COMMON JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

As against the order of assessment, passed on 18.5.2015, with reference to the assessment year 2011-2012, the assessee filed a writ petition in W.P.No.20478 of 2015. The same was dismissed by a learned Judge by an order dated 9.7.2015, on the ground of availability of an alternative remedy. Therefore, aggrieved by the said order, the assessee has come up with the writ appeal in W.A.No.1326 of 2015.

2. In the meantime, the assessing officer passed orders of assessment dated 20.5.2015 and 21.5.2015 in respect of assessment year 2012-2013, the former being one under the Central Sales Tax Act and the latter being one under the Tamil Nadu Value Added Tax, 2006. In those writ petitions, the learned Judge ordered notice and granted status quo on 26.6.2015.

3. Since all the assessment orders, which were under challenge before the learned Judge, revolve around the question of failure of the assessing officer to comply with the principles of natural justice, we directed the writ petitions to be tagged along with the writ appeal. Therefore, after getting appropriate orders of the Honourable the Chief Justice, the writ petitions were tagged with the writ appeal.

4. Heard Mr.P.Rajkumar, learned counsel appearing for the appellant/petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent.

5. On 4.2.2015, the assessing officer issued a notice, proposing to revise the assessment. The appellant/assessee submitted their objections on 24.2.2015. According to the appellant/assessee, they submitted additional objections on 27.3.2015 and on 8.4.2015, when a personal hearing took place. It is the positive case of the appellant/assessee that necessary documents were filed alongwith the additional objections submitted on 8.4.2015 at the time of personal hearing.

6. However, the assessing officer passed three orders in succession, the first on 18.5.2015 under the Tamil Nadu Value Added Tax Act, 2006 in relation to the assessment year 2011-2012, the next on 20.5.2015 under the Central Sales Tax Act, 1956 in relation to the assessment year 2012-2013 and the third on 21.5.2015 under the Tamil Nadu Value Added Tax Act, 2006 in relation to the assessment year 2012-2013.

7. Challenging all the three orders of assessment, the assessee filed three writ petitions in W.P.Nos.20478, 18546 and 18547 of 2015.

8. The second and third writ petitions appear to have come up for admission on 26.6.2015 before the learned Judge. On the said date, the learned Judge directed the Special Government Pleader to get instructions and posted the matter after two weeks. In the meantime, status quo was also granted.

9. The first writ petition viz., W.P.Nos.20478 of 2015 came up for admission on 9.7.2015. On that date, the learned Judge dismissed the said writ petition on the ground of availability of alternative remedy. This is how the writ appeal came up before us.

10. It is true that this court will be normally hesitant to entertain writ petitions against the orders of assessment, when the assessees have effective alternative remedy of appeal under the statute. But, the said rule is not without exception. In cases where there has been gross violation of principles of natural justice and in cases wherein a question of assumption of jurisdiction by the authority arises, this court is not powerless to entertain the writ petitions. Therefore, it is upto the assessee to satisfy that the case falls under those exceptions.

11. In the case on hand, a look at the first order of assessment dated 18.5.2015, which relates to the assessment year 2011-2012 under the Tamil Nadu Value Added Tax Act, 2006, would show that the assessing officer took note of the objections

dated 24.2.2015. There is no dispute about the fact that the assessing officer gave opportunity of personal hearing to the petitioner. The petitioner has produced acknowledgment in the delivery book to show that the objections dated 24.2.2015 were delivered in the office of the assessing officer.

12. Similarly, the assessee has filed copies of the additional objections filed on 27.3.2015 with a xerox copy of the delivery book to show that it was delivered on 31.3.2015 in the office of the assessing officer.

13. The personal hearing appears to have taken place on 8.4.2015. On that date also, the appellant submitted a letter which is evidenced by the concerned page of the letter delivery book. In the letter dated 8.4.2015, the petitioner has stated as follows:-

> "In order to support the above contention we once again produce the following documents:
> i) Details of stock inward from our branches by way of stock transfer/purchases showing details of the goods, i.e., educational contents, branch transfer challans raised by our branches.
> ii) Details of F Forms declarations issued by us to our branches for receipt of the goods i.e., content.
> iii) Our interstate invoices raised on various educational institutions i.e., Schools for sale of contents brought from other states by way of stock transfer/purchases.
> From the perusal of the above documents, it is very clear that we have effected interstate sale of contents brought from other states by way of stock transfer/interstate purchase and so the question of reversal of input tax credit u/s 19(5)(C) is not warranted."

14. From the above, documents, two things are very clearly borne out. The first is that the second and third objections submitted by the petitioner on 27.3.2015 and 8.4.2015 have not been taken note of by the assessing officer. The second aspect is that the documents referred to in the letter of objections dated 8.4.2015 were also not taken note of. What is worse is the fact that in the order of assessment dated 18.5.2015, the assessing officer has proceeded to draw an adverse inference on the ground that the documents were not produced. The relevant portion of the order of assessment dated 18.5.2015 is extracted as follows:-

> "They have further stated that the ITC reversal under Section 19(5)(c) against CST

> sale is not warranted in their case for the reason that the goods brought from their Head Office and other branches in other state by way of stock transfer and thereafter sold by way of interstate sales from Chennai. As the dealers have not produced the relevant stock book together with the relevant stock transfer invoices, sale bills, etc., their contention is not acceptable."

15. Therefore, we are of the view that there has been violation of principles of natural justice on two accounts viz., (1) not taking into account the objections dated 27.3.2015 and 8.4.2015 and (2) not taking into account the records produced.

16. Further, on the basis of the written instructions given by the Department, it is contended by Mr.V.Haribabu, learned Additional Government Pleader that the objections dated 27.3.2015 and 8.4.2015 related only to the assessment year 2012-2013 and that those objections were not filed for the assessment year 2011-2012.

17. The said stand taken by the respondent has to be rejected for more reasons than one. They are as follows:- (1) In the assessment order dated 21.5.2015, which relates to the assessment year 2012-2013 under the TNVAT Act, 2006, there is a reference to the letter of the assessee dated 27.3.2015. But, in the order dated 20.5.2015 which relate to the assessment for the same assessment year under the CST Act, there is no reference either to the letter of objections dated 24.2.2015 or to the subsequent objections dated 27.3.2015 and 8.4.2015. (2) The letter dated 8.4..2015, copy of which is produced before us, shows that it covered both the assessment years and was not confined to one assessment year. If the assessing officer had indicated anywhere in any of the three assessment orders that such a letter of objection was filed either without enclosing the copies of the records or without mentioning the correct assessment year, we would have appreciated such a stand. Since that has not been done, the averments made by the assessee go uncontroverted.

18. The mere issue of notice and calling for objections and allowing the assessee to participate in the personal hearing will not be sufficient compliance of the principles of natural justice. The issue of notice, calling for objections and grant of personal hearing are more of procedural in nature. The consideration of the objections raised and the documents produced form substantive part of the principles of natural justice. Unless the substantive part is also complied with, the

circle will not be completed.

19. In view of the above, it is clear that the orders of assessment suffer from non application of mind to the records produced and violation of principles of natural justice. Hence, the orders of assessment are liable to be set aside and the assessee is given one more opportunity. Accordingly, the writ appeal is allowed. The order of the learned Judge is set aside. All the three writ petitions are allowed. The orders of assessment are set aside and the matter is remitted back to the assessing officer. The assessing officer shall serve a notice on the appellant fixing the date of hearing. On the date so fixed by the assessing officer, the assessee shall produce all the records on which they placed reliance. Thereafter, on the basis of the objections and the records produced, the assessing officer shall pass fresh orders. No costs. The connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssk.

To

The Assistant Commissioner(CT)
Madhavaram Assessment Circle,
No.170, G.N.T.Road,
Puzhal, Chennai 600 066.

+1 cc to Mr.P.Rajkumar Advocate sr.58390

W.A.No.1326 of 2015,
W.P.Nos.18546 &
18547 of 2015

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