IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.38062 to 38067 of 2015
and M.P.Nos.1 & 2 of 2015

Tata Projects Limited ... Petitioner in all WPS
Rep. by its Company Secretary & Head Legal-
Dr. A.Raja Mogili) No.9 1st Floor
AF Block 8th Street 11th Main Road
Anna Nagar Chennai-40.

Vs

1 The Assistant Commissioner (CT) (Main)
Aminjikarai Assessment Circle
Kuralagam Annex Building III Floor
Chennai-108.

2 The Appellate Deputy Commissioner (CT)
Chennai-Central Third Floor
PAPJAM Building Annex 1 Greams Road
Chennai-6.

... Respondents in all WPS

Writ Petition Nos.38062 to 38064 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records on the files of the First Respondent herein in TIN/3325 1022022/2007-08, 2008-09, 2009-10 dated 15.11.2012 as revised by the proceedings in TIN/3325 1022022/2007-08, 2008-09, 2009-10 dated 15.05.2014 and quash the same.

Writ Petition Nos.38065 to 38067 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records on the files of the Second Respondent herein in A.P.No.164, 165 & 166/2015 VAT (2007-08) (2008-09) (2009-10) dated 30.09.2015, quash the same and direct the Second Respondent to hear and dispose A.P.No.164 165 & 166/2015 VAT (2007-08) (2008-09) (2009-10) on its merits.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.S.Manoharan Sundaram, AGP

COMMON ORDER

Mr.S.Manoharan Sundaram, learned Additional Government Pleader, takes notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2. While writ petition Nos.38062 to 38064 of 2015 have been filed under Article 226 of the Constitution of India challenging the orders of the 1st respondent dated 15.11.2012, as well as the revised orders dated 15.05.2014, writ petition Nos.38065 to 38067 of 2015 have been filed challenging the orders of the 2nd respondent appellate authority dated 30.09.2015 passed in A.P.No.164, 165 & 166/2015 VAT (2007-08) (2008-09) (2009-10) respectively and to direct the 2nd Respondent to hear and dispose of A.P.No.164 165 & 166/2015 VAT (2007-08) (2008-09) (2009-10) respectively on its merits.

3.1 The petitioner being a Company incorporated under the Companies Act, 1956, a registered dealer under the provisions of TNVAT Act and CST Act on the files of the 1st respondent, is engaged in the business of execution of various types of works contracts inside the State of Tamil Nadu. During the assessment years in question viz., 2007-08 to 2009-10, the petitioner had executed various indivisible works contracts inside the State of Tamil Nadu.

3.2 According to the petitioner, on the transfer of property involved in the execution of such work contracts, the petitioners also paid the applicable VAT under Section 5 of the TNVAT Act. Taxes were paid at either 4% or 12.5% depending upon the type of material transferred in the execution of such works contracts and on the basis of the availability of exemption Notification. Besides, the petitioner also had inter-state purchases, which also fell under both categories, i.e., 4% and 12.5%. The purchases and transfers were duly reported by the petitioner and applicable taxes were paid.

3.3 Further, according to the petitioner, finding errors in the monthly returns for the month of April 2007, the petitioner also filed revised return for the month on 16.07.2007 and thus the monthly returns reflected the correct and actual state of affairs. The petitioner would state that the returns so filed completely and accurately reported all purchases and all sales made by the petitioner inside the State of Tamil Nadu during the assessment years VAT: 2007-08 to 2009-10.

3.4. While so, the place of business of the petitioner was inspected by the Officers of the Enforcement Wing on 11.01.2010, 19.03.2010 to 13.04.2010, who pointed out certain alleged omissions on the part of the petitioner, one of which is the alleged abnormality in the ratio of purchases and sales. The same was denied by the petitioner by stating that they are in a position to substantiate and support the returns filed by them.

3.5. However, according to the petitioner, by notice dated 02.08.2010, the 1st respondent required the petitioner to reconcile and report their correct taxable turnover, failing which, they were required to pay a sum of Rs.3,14,79,442/- for all the assessment years in question. Accordingly, the petitioner submitted a letter dated 28.08.2010 furnishing all details for the three assessment years separately, also stating that if any further clarification is required, they would provide the same with evidence. Thereupon, nothing was heard from the 1st respondent. To the shock of the petitioner, the impugned orders dated 15.11.2012 were served on the petitioner on 20.11.2012 without even a proper show cause notice. The notice dated 02.08.2010 proposed to give effect to the version of the Enforcement Wing Officers, only if the petitioner did not reconcile and report their correct taxable turnover. The petitioner, having done so, vide their letter dated 28.08.2010, if the 1st respondent found that to be incorrect, for any reason, he ought to have issued a proper show cause notice. Thus, according to the petitioner, the impugned proceedings suffers from gross violation of the principles of natural justice.

3.6 Upon receipt of the impugned orders dated 15.11.2012, since the first respondent has not taken into account the details furnished by the petitioner, thought it fit to file applications for rectification under Section 84 of the VAT Act and accordingly filed the same. Since, no orders were passed, the petitioner filed W.P.Nos.34459 to 34461 of 2012 before this Court on 19.12.2012, praying for a direction to pass orders on the rectification petitions dated 12.12.2012 and this Court, by order dated 19.12.2012, granted the said relief.

3.7 According to the petitioner, the 1st respondent, passed orders on 15.05.2014, after expiry of 15 months from the date of receipt of a copy of the said order. However, on the bona fide belief that the petitioner would be in a position to challenge the original orders dated 15.11.2012, as revised by orders dated 15.05.2014 by way of statutory first appeals under Section 51 of the TNVAT Act, the petitioner preferred appeals in A.P.Nos.164 to `166 of 2015 before the Appellate Deputy Commissioner (CT) Appeals, Chennai, the 2nd respondent herein. However, by orders dated 30.09.2015, the 2nd respondent has dismissed the appeals as barred by limitation. Thereafter, the petitioner was also served with recovery notice 09.10.2015 by the 1st respondent, requiring the petitioner to pay the balance tax amount of Rs.4,37,82,148/-.

Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner would submit that the impugned assessment orders dated 15.11.2012 were passed after 30.06.2012, ie., after completion of the deemed assessment for the assessment years in question, in terms of the 1st proviso to Section 22(2) of the TNVAT Act, the 1st respondent, ought to have issued a show cause notice after 30.06.2012, as required by proviso to Section 27(2) of the TNVAT Act.

4.2 Further, according to the learned counsel for the petitioner, the 1st respondent has purported to exercise the power under Section 27(1)(a) of the TNVAT Act, he ought to have formed the view that the turnover has escaped assessment after the completion of the deemed assessment on 30.06.2012, however, no such view was formed by the 1st respondent. The notice dated 28.08.2010 issued before the completion of deemed assessment on 30.06.2012 is insufficient and not a show cause notice for the purpose of Section 27(1)(a) of the TNVAT Act.

4.3 It is the further submission of the learned counsel for the petitioner that unless the 1st respondent had formed view that the turnover of the business of the petitioner had escaped assessment, unless the 1st respondent had issued a show cause notice after forming that view, the 1st respondent could not have completed any proceeding under Section 27(1)(a) of the TNVAT Act and since those jurisdictional facts are absent as far as the case of the petitioner is concerned, the impugned assessment orders are clearly without jurisdiction and hence the same was questioned before the appellate authority.

4.4. Further, according to the learned counsel for the petitioner, although a power to make a best judgment assessment is available under Section 27(1)(a) of the TNVAT Act, that best of judgment must be exercised in a just, fair and reasonable fashion and not arbitrarily and for making such a best judgment assessment, there must be materials available on record and there must be nexus between the materials available and the exercise of judgment. According to the learned counsel for the petitioner, the principles laid down in the Judgment of the Hon'ble Supreme Court reported in 17 STC 465 (State of Kerala vs. C.Velukutty) supports this position and thus since the impugned assessment orders dated 15.11.2012 fall foul of the principles laid down in the said Judgment of the Hon'ble Supreme Court, the same are therefore, nullity.

4.5 Adding further, learned counsel for the petitioner would submit that the 1st respondent has committed an error apparent on the face of the record in totally ignoring the revised returns filed by the petitioner. He would further submit that the 1st respondent has omitted to see that prior to Tamil Nadu Act 23 of 2012 effective from 19.06.2012, the 1st respondent had no power to reject the returns filed by the petitioner. Therefore, the notice dated 28.08.2010 is clearly a nullity and the 1st respondent ought to have issued a fresh show cause notice after completion of the deemed assessment on 30.06.2012.

4.6 As far as the appeals filed by the petitioner before the 2nd respondent are concerned, according to the learned counsel for the petitioner, the 2nd respondent has failed to see that consequent to the passing of the revised proceedings dated 15.05.2014 by the 1st respondent, the only effective and operative order in force in the eyes of law was that order and hence the petitioner is entitled to challenge the correctness of the demands contained in the orders dated 15.11.2012, as revised by the proceedings of the 1st respondent dated 15.05.2014. That apart, according to him, since the appeals were filed within 30 days of the receipt of the orders dated 15.05.2014 passed by the 1st respondent, the appeals filed by the petitioner were competent and therefore, ought to have been heard and decided on merits by the 2nd respondent. Hence, the 2nd respondent has committed an error of jurisdiction in dismissing the 1st appeals filed by the petitioner as barred by limitation.

Based on these, the learned counsel for the petitioner has sought for allowing of the writ petitions.

5. The learned Additional Government Pleader (Taxes), appearing for the respondents, on the other hand submitted that there is an effective, efficacious alternative remedy available to the petitioner before the Tribunal and hence the writ petitions are not maintainable.

6. At this juncture, learned counsel for the petitioner would submit that since the legal issues are raised, which the appellate authority has failed to consider, if the petitioner is permitted to challenge the orders dated 15.11.2012 before the appellate authority, that would serve the purpose and would meet the ends of justice both legally as well as factually and to prove their bona fide, according to the learned counsel for the petitioner, the petitioner is inclined to pay 50% of the disputed demand of tax and also furnish bank guarantee for the remaining 50% of the disputed tax.

7. This Court heard the submissions made by the learned counsel on either side and perused the materials available on record.

8. When there are certain legal issues which the 1st appellate authority had failed to consider, the points now raised by the learned counsel for the petitioner deserve to be considered by this Court. Hence, in the interest of justice, this Court is of the view that the petitioner may be permitted to challenge the assessment orders dated 15.11.2012 before the appellate authority.

9. Accordingly, the petitioner is permitted to challenge the assessment orders dated 15.11.2012 before the 2nd respondent, within a period of four weeks from the date of receipt of a copy of this order. The petitioner shall comply payment of 50% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order and also furnishing bank guarantee for the balance 50% of the disputed tax as volunteered by them, and on such payment and furnishing of bank guarantee, the appellate authority shall entertain the appeals and pass orders on merits and in accordance with law, after affording due opportunity to the petitioner. The said

exercise shall be completed by the appellate authority within a period of six weeks thereafter. Further making it clear that till the disposal of the appeals, there shall not be any recovery. Writ petitions challenging the assessment orders dated 15.11.2012 viz., W.P.Nos.38062 to 38064 of 2015 are disposed of accordingly.

10. Since the assessment orders dated 15.11.2012 are permitted to be challenged before the appellate authority, no further order is required to be passed in writ petitions in W.P.Nos.38065 to 38067 of 2015, challenging the orders of the appellate authority.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

True Copy

Sub Assistant Registrar

To

1 The Assistant Commissioner (CT) (Main)
Aminjikarai Assessment Circle
Kuralagam Annex Building III Floor
Chennai-108.

2 The Appellate Deputy Commissioner (CT)
Chennai-Central Third Floor
PAPJAM Building Annex 1 Greams Road
Chennai-6.

+1cc to Mr.N.Inbarajan, Advocate Sr.64842
+1cc to The Government Pleader (Taxes), Sr.65361

W.P.Nos.38062 to 38067 of 2015

vs[co]
srg 08/12/2015