

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8669 of 2015

and

M.P.No. 1 of 2015

Arcelor Mittal Dhamm Private Limited,
Rep. By its Vice President,
Rajeshjayaraman,
No.S-3, Sipcot,
Phase III, Ranipet.

... Petitioner

Vs.

The Assistant Commissioner (CT),
Ranipet (SIPCOT),
Ranipet.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus to call for the records in TIN No.33100721668/2012-13, dated 27.02.2015, on the file of the respondent and quash the same as illegal, arbitrary and direct the respondent to pass order strictly as per the provisions of the TNVAT Act.

For Petitioner :Mr.A.Thiyagarajan, SC
for Mr.S.Ramesh Kumar

For Respondent :Mr.S.Kanmani Annamalai, AGP (T)

ORDER

The petitioner has filed the present writ petition challenging the proceedings dated 27.02.2015 passed by the respondent / the Assistant Commissioner (CT), Ranipet (SIPCOT), who was earlier directed by this Court in W.P.Nos.32300 to 32303 of 2014, dated 10.12.2014, while setting aside his previous impugned order, to pass a speaking order, after affording an opportunity of personal hearing.

2. Assailing the impugned order, learned Senior counsel appearing for the petitioner submitted that the petitioner, aggrieved by the earlier order passed by the same respondent dated 17.10.2014, filed Writ Petition No.32301 of 2014 on the ground of non-consideration of profit and loss accounts, certificates and the turnover relating to interstate sales and other transaction falling

under turnover. This Court, by order dated 10.12.2014, set aside the earlier order passed by the respondent, specifically directing him to afford all reasonable opportunities including personal hearing to the petitioner. In spite of such direction, the respondent, once again, has repeated the same error, which is not only running contrary to the direction, but also placed the petitioner in a grave prejudice. Thereafter, though the petitioner has submitted his detailed reply dated 29.01.2015 running to five pages, the respondent again passed a cryptic order ignoring a specific direction of this Court as stated above, which indicates the non-application of mind of the respondent.

3. In support of his submissions, he has also relied upon a judgment of this Court in the case of Sri Vinayaga Agencies v. the Assistant Commissioner (CT) (W.P.Nos.2036 to 2038 of 2013, dated 29.01.2013), wherein, this Court, while setting aside the impugned order passed by the respondent therein, held that the petitioner therein was liable for the non-payment of the tax by the selling dealer, by referring to Section 19(1) of the Tamil Nadu Value Added Tax Rules(in short "TNVAT") which states that input tax credit can be claimed by the registered dealer, provided if the registered dealer establishes that the tax due on such purchase has been paid by him in the manner prescribed. It is further submitted that when the petitioner has filed his detailed reply mentioning that only the seller has not paid the tax, therefore, it is for the respondent department to proceed against the selling dealer for recovery of tax in a manner known to law. Therefore, on that basis, he pleaded, since the respondent has not followed the law and also the order of this Court, the writ petition deserved to be allowed by setting aside the impugned order.

4. Per contra, learned counsel appearing for the respondent submitted that, no doubt, the detailed reply given by the petitioner dated 29.01.2015 could have been averted by the respondent, while considering the case on hand. As the Assessing Officer has not passed the speaking order as per the direction of this Court, one more chance may be given, therefore, he would be able to consider the issue raised in question in a manner known to law.

5. Heard both sides.

6. The petitioner is a registered dealer both under the Tamil Nadu Value Added Tax Act, 206 and the Central Sales-Tax Act, 1956 and he is an Assessee on the file of the respondent. The petitioner reported a total and taxable turnover in the Form-I at Rs.63,75,96,807/- for the year 2012-13 and has also completed self-assessment under Section 22(2) of TNVAT Act. Whiles, the Enforcement Officers inspected the business place of the petitioner on 22.08.2013, 24.08.2013, 26.08.2013 and 27.08.2013 and on inspection, they have noted that the petitioner has not maintained any purchase and sale register under Rule 6(2)(b) and Rule 6 (2)(c)

of TNVAT Rules and has not maintained the production-cum-stock account. It was further alleged that the petitioner has availed excess ITC to the tune of Rs.6,602/- and Rs.1,67,960/-.

7. The record shows that the petitioner, on receiving the notice dated 06.08.2014 issued by the respondent, has filed a detailed reply dated 11.08.2014 explaining each and every points along with the proof for their reporting of the turnover by the vendors by filing revised return and payment of tax to the Assessing Officers. A perusal of the reply dated 11.08.2014 with regard to point No.1 i.e. excess ITC claimed and adjusted to the tune of Rs.6,602/-, shows that, based on the Enforcement Audit demand, alleged ITC amount of Rs.6,602/- has been paid to the department vide cheque No.825435, dated 17.09.2013. This has not been considered by the Assessing Officer in the impugned order. With regard to point No.2 i.e. sales turn over was not reported for the Tax value of Rs.1,12,631/-, the petitioner appears to have informed the supplier about the non-payment of VAT on the supplies made to them and accordingly, advised to take corrective action by making payment of the tax and it appears that the supplier made the payments and confirmed the same by giving them proof of payment along with the revised return and form WW. Again, this aspect has not been considered by the respondent. With regard to point No.4 that ITC reversal on Stock Transfer for the amount of Rs.1,67,960/-, a reply has been given admitting the fact that they have wrongly reversed the ITC to the extent of Rs.27,75,136/- instead of Rs.29,43,096/- on stock transfer in the year 2012-13 and as there was short of tax reversal, it is stated that they were arranging to make payment towards shortfall amount, but, again, this has not been dealt with in the impugned order. With regard to point No.5, the petitioner stated that the ITC taken by them against Safety Equipment has been paid to Enforcement Department to the tune of Rs.5,07,704/- vide cheque No.825433, dated 17.09.2011. Once again, this aspect also has not been dealt with by the respondent while passing the impugned order.

8. In these circumstances, what is surprising for me is, on the earlier occasion, though this Court in W.P.Nos.32300 to 32303 of 2014, dated 10.12.2014, directed the Assistant Commissioner (CT) to redo the assessment after giving an opportunity of hearing to the petitioner, in spite of such direction, the respondent has passed a non-speaking order. For proper appreciation, relevant portion of the said order passed by this Court is extracted hereunder:

"6. Time and again, this Court has pointed out as to the manner in which the Assessing Authority has to exercise his jurisdiction. The Assessing Authority is a Quasi Judicial Authority and is bound to consider the issues raised by the dealer by appreciating the factual and legal position. It is rather

surprising that the respondent being an Assessing Authority has failed to bear in mind the manner in which the power has to be exercised and has passed a cryptic order. The manner in which the impugned order has been passed by the respondent has to be deprecated. Furthermore, the reason assigned for rejecting the objection is wholly illegal.

7.The law with regard to the effect of D-3 proposal is well settled and the Hon'ble Division Bench in the case of Madras Granites (P) Ltd Vs. Commercial Tax Officer, Arisipalayam Circle, Salem reported in (2006) 146 STC 642 has held that it is well-settled that the assessing officer is a Quasi-Judicial Authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. However if it is found that the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments, the assessments are not sustainable in law.

8.The Assessing Officer failed to take note of the decision of the Hon'ble Division Bench which has been consistently followed in several cases by this Court. Admittedly, the cause of action for issuing the pre-revision notice was on the basis of the proposal submitted by the Enforcement Wing Officials pursuant to an inspection conducted in the place of business of the petitioner. When the Assessing Officer issues a pre-revision notice based on the proposal and the dealer submits their objections, the Assessing Officer has to independently adjudicate the matter. He shall not be bound by the directions issued by the Enforcement Wing Officials who are undoubtedly Officials higher in rank. The respondent in the instant case has abdicated his powers as an Assessing Officer.

9.Hence, the impugned orders are held to be bad in law and accordingly, the same are quashed. The matter is restored to the file of the respondent and the respondent shall afford an opportunity of personal hearing to the petitioner and pass reasoned order on merits and in accordance with law."

After perusing the above said direction, I feel that the Assistant Commissioner (CT)/respondent herein, with all impunity, has blindly proceeded in passing the impugned order by committing repeated mistakes without taking note of the above said direction of this Court. Thus, due to this unmindful attitude, he has not only made the department to incur unnecessary expenses, but also wasted the precious time of the Court. Having regard to such reprehensible conduct on the part of the Assistant Commissioner (CT), this Court is constrained to direct the office to mark a copy of this order to the Joint Commissioner (CT), Vellore / Appellate Authority, so that proper admonition is given to him to avoid recurrence of such instance on his part in future.

9. Further, as stated above, as the petitioned has also admitted in his reply dated 11.08.2014 that they have reversed the ITC to the extent of Rs.27,75,136/- instead of Rs.29,43,096/- on stock transfer for the year 2012-13 and as such there was a short of tax reversal to the tune of Rs.1,67,960/-, for which, they have been arranging to make payment towards shortfall amount, the matter has to go back to the Assistant Commissioner (CT) to reconsider the issue afresh on the basis of a detailed reply given by the petitioner as stated above. Accordingly, the matter is remanded back.

10. In fine, for the reasons stated above, this Court is inclined to set aside the impugned order. Accordingly, the writ petition stands allowed by setting aside the impugned order. No Costs. M.P.No.1 of 2015 is closed.

rkm

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner (CT),
Ranipet (SIPCOT),
Ranipet.
2. The Joint Commissioner (CT),
Vellore.

+ 1 cc to Mr.S.Ramesh Kumar, Advocate sR 22446

tej(co)
prk25/5

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