In the High Court of Judicature at Madras

Dated : 03.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.10936 to 10939 of 2016
and WMP.Nos.9522 to 9529 of 2016

Shri Mahalakshmi Iron Traders rep.
by its Proprietor M.Sivashanmugam ...Petitioner in all the WPs

Vs

1.The Deputy Commercial Tax Officer,
Udumalpet (North) Assessment
Circle, Udumalpet, Coimbatore Dist.

2.The Assistant Commissioner (CT) FAC,
Udumalpet North Assessment Circle,
Udumalpet, Coimbatore District. ...Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the first respondent in his proceedings respectively in (i) TNGST No.2480295/1997-98 (WP.No.10936 of 2016) (ii) TNGST No.2480295/1998-99 (WP.No.10937 of 2016) (iii) CST.No.611204/1997-98 (WP.No.10938 of 2016) and (iv) CST No. 611204/1998-99 (WP.No.10939 of 2016) dated 31.8.2000 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

By consent, the writ petitions are taken up for final disposal.

2. In all these writ petitions, the petitioner seeks to quash the orders of assessment passed by the first respondent both under the Central and State Enactments for the assessment years 1997-98 and 1998-99.

3. The petitioner is a dealer in old iron and registered under the erstwhile Tamil Nadu General Sales Tax Act and the

Central Sales Tax Act. The petitioner challenges the impugned proceedings on two grounds. Firstly, it is stated that no notice was served on the petitioner and no opportunity of personal hearing was granted. Secondly, it is submitted that the first respondent mechanically passed the impugned order by accepting the D3 report and he has not exercised the duties of the Assessing Authority. The learned counsel further submits that notices sent had returned unserved.

4. It is further contended that in terms of Rule 52(1) of the Tamil Nadu General Sales Tax Rules, it should be sent to the residential address of the dealer. In support of such a contention, reliance is placed on the decision of this Court in the case of R.Damodan Vs. Union of India [(1993) 88 STC 72].

5. The learned Additional Government Pleader appearing for the respondents submits that on more than four occasions, notice was served on the dealer, yet they did not appear and file objections and that therefore, the first respondent was justified in proceeding to pass the impugned orders.

6. Heard the learned counsel on both side.

7. The impugned orders show that they are solely based upon the D3 proposal from the Deputy Commercial Tax Officer, Enforcement, Udumalpet. The manner, in which, the Assessing Authority has to act has been pointed out in several decisions and it would be beneficial to refer to the decision of the Hon'ble Division Bench of this Court in the case of Madras Granites (P) Ltd. Vs. C.T.O., Arisipalayam Circle [(2006) 146 STC 642], which was followed by this Court in the case of Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri [(2015) 81 VST 560] The relevant portion in the decision in (2006) 146 STC 642 (cited supra) reads as follows :

> "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, it is found that in both the matters, the Assessing Officer has acted on the basis of the directions of the higher authority in completing the assessment."

8. A bare perusal of the impugned orders shows that the Assessing Officer abdicated his powers and passed the orders solely based upon D3 proposal. Even assuming that the petitioner

did not file their objections, that will not be a ground to pass the orders without assigning any reason as done in this case. Further, the orders do not state that the procedure contemplated under Rule 52(1) of the said Rules had been followed in the manner of service of notice. In the light of the above, this Court is of the view that the petitioner should be afforded an opportunity to place their objections.

9. However, for such reason, this Court is not inclined to quash the impugned proceedings, but would direct the petitioner to treat the impugned proceedings as show cause notices and submit their objections in writing within a period of three weeks from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall afford an opportunity of personal hearing to the petitioner, permit them to produce the books of accounts and other records and after perusal of the same, pass a speaking order on merits and in accordance with law as expeditiously as possible. The petitioner is also permitted to make an application for furnishing copies of the records, which were relied upon by the Assessing Officer in the impugned proceedings and subject to payment of charges, those copies shall be furnished to the petitioner so as to enable them to effectively contest the matter.

10. With the above directions, the writ petitions are disposed of. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To
1.The Deputy Commercial Tax Officer, Udumalpet (North) Assessment Circle, Udumalpet, Coimbatore Dist.
2.The Assistant Commissioner (CT) FAC, Udumalpet North Assessment Circle,
Udumalpet, Coimbatore District.

1 cc to Mr.S.Ramanathan, Advocate, sr.29448
1 cc to Special Government Pleader, sr.29926

WP.Nos.10936 to 10939 of 2016
&WMP.Nos.9522 to 9529 of 2016

sks co
kra 16.06.2016