IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.14997 to 14999 of 2014
and
M.P.Nos.1 to 1 of 2014

W.P.No.14997 of 2014

Tvl.Uma Shankar Traders,
Represented by its Partner Smt.S.Sarada,
119, Bhavani Road, Erode - 638 004. .. Petitioner

Vs

1.The Commercial Tax Officer,
Group-I (Enforcement)(Central), Chennai.

2.The Joint Commissioner (CT),
(Enforcement), Coimbatore.

3.The Assistant Commissioner (CT)
Chithode Assessment Circle,
Chithode, Erode District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his proceedings in Form-VSI-I and quash the surprise inspection-reports dated 17.03.2014 and 18.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment/re-assessment.

W.P.No.14998 of 2014

Sri Maharaja Refineries,
Represented by its Partner P.Sathiyamoorthy,
125, Bhavani Road,
Erode - 638 004. .. Petitioner

Vs

1.The Commercial Tax Officer,
P.N.Palayam Circle, Coimbatore.

2.The Joint Commissioner (CT),
(Enforcement), Coimbatore.

3.The Assistant Commissioner (CT)
Chithode Assessment Circle,
Chithode, Erode District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his proceedings in Form-VSI-I and quash the surprise inspection-reports dated 17.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment/re-assessment.

W.P.No.14999 of 2014

M/s.Maharaja Sivam Industries (P) Ltd.,
Represented by its Director, K.Paramasivam
119, Bhavani Road,
Erode – 638 004. .. Petitioner

Vs

1.The Commercial Tax Officer,
Group-VI Chennai Enforcement Central, Chennai.

2.The Joint Commissioner (CT),
(Enforcement), Coimbatore.

3.The Assistant Commissioner (CT)
Chithode Assessment Circle,
Chithode,
Erode District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his proceedings in Form-VSI-I and quash the surprise inspection-reports dated 17.03.2014 and 19.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment/re-assessment.

For Petitioner
in all W.Ps : No appearance

For Respondents
in all W.Ps : Mr.Manokaran Sundaram
Additional Government Pleader

COMMON ORDER

None appears on behalf of the petitioners. Heard Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents.

2.In all these writ petitions, the petitioners have questioned the surprise inspection reports and the statement recorded from them. The Contention of the petitioners is that the first respondent has absolutely no jurisdiction to conduct such surprise inspection or record statement or seize records.

3.The case of the petitioners is that as per Section 48 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act) there is no power conferred on the officer in the rank of a Commercial Tax Officer and therefore, the entire inspection and the statement recorded, during the course of inspection, is illegal, without jurisdiction and cannot be relied on. It is further stated that as per Section 65 of the TNVAT Act the power can be conferred on the Assessing Officer and admittedly, the petitioners are not carrying on business within the jurisdiction of the first respondent, nor they are registered as a dealer within the said assessment circle. The petitioners have also referred to Rule 20 of the TNVAT Rules to state that the said Rule, read along with Section 48 of the Act, does not empower an officer in the rank of a Commercial Tax Officer to conduct such inspection or record statement.

4. The petitioners have also referred to a Notification issued by the Government in exercise of the powers under Sections 41 and 41A of the erstwhile Tamil Nadu General Sales Tax Act with regard to the powers of the officers to inspect account books etc. It is submitted that the said provision is in pari materia with Section 65 of the TNVAT Act and the Notification would very will apply to the provisions of the TNVAT Act and thus, the entire proceedings initiated by the first respondent is wholly without jurisdiction.

5. The learned Additional Government Pleader appearing for the respondents submitted that in terms of Section 48 of the TNVAT Act, the Commissioner of Commercial Taxes shall perform

the functions conferred on him throughout the State and the other officers shall perform their functions within such local limits as the Government or any authority or officer empowered in this behalf may assign to them.

6. It is also submitted that by virtue of the above provision, the Commissioner of Commercial Taxes is conferred with the authority throughout the jurisdiction of Tamil Nadu and he is entitled to delegate his powers and he has authorised the Joint Commissioner (CT), Enforcement, Coimbatore, to conduct surprise inspection of the petitioners Companies. Authorization is also given to engage officials from other enforcement divisions, as may be required.

7. Thus, the learned Additional Government Pleader submits that the officer, who conducted the Inspection, recorded the statement and seized the records, is vested with the powers.

8. After hearing the learned Additional Government Pleader and on perusing the materials placed on record, at the very out set, it has to be pointed out that writ of certiorari cannot be issued, quashing the inspection report or the seizure mahazar or the statement recorded from the dealer. The petitioners would state that the officer does not posses the jurisdiction to record the statement or prepare the inspection report or seize the documents. But however, it appears that the documents were seized from the place of business of the petitioner. Therefore, if the petitioners have any reservations on the statement given by them before the Enforcement Officials, it is always open to the petitioners to raise contention before the assessing officer and it is a settled legal position that the assessing officer, while completing the assessment, cannot solely be guided by the statement recorded by the Enforcement Officials. Therefore, the petitioners need not have any apprehension that their rights and remedies will stand foreclosed, if they allow the impugned inspection report and the statement to stand. It is always well open to the petitioners to contest the merits of the matter, when the assessing officer takes up the issue. Even if in a case the petitioners state that the record does not belong to their company or organisation that point also could be canvassed before the assessing officer. Since the petitioners have raised the question of jurisdiction and the respondents have stated that there is delegation of power, this Court is not inclined to quash the inspection report or the statement, at this juncture. This issue relating to jurisdiction is left open to be canvassed by the petitioners as and when notice is issued by the assessing officer.

9. With the above observations, the writ petition stands disposed of. No costs. Connected miscellaneous petition is closed. Consequently, connected miscellaneous petitions are also closed and the interim order granted by this Court stands vacated.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Group-I (Enforcement)(Central), Chennai.

2.The Joint Commissioner (CT),
(Enforcement), Coimbatore.

3.The Assistant Commissioner (CT)
Chithode Assessment Circle,
Chithode, Erode District.

4.The Commercial Tax Officer,
P.N.Palayam Circle, Coimbatore.

5.The Commercial Tax Officer,
Group-VI Chennai Enforcement Central, Chennai.

+1cc to M/S.R.Senniappan, Advocate Sr.42312

W.P.Nos.14997 to 14999 of 2014
and M.P.Nos.1 to 1 of 2014

rp[co]
srg 22/08/2016