

In the High Court of Judicature at Madras

Dated : 14.6.2016

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition Nos. 24216 to 24219 of 2015 &
MP.Nos. 1, 1, 1 and 1 of 2015

Sai Petro Products, rep. by
its Proprietor A. Natarajan

...Petitioner in
all the WPs

Vs
+

The Assistant Commissioner, (CT)
Krishnagiri Assessment Circle,
Krishnagiri-1.

...Respondent 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
impugned proceedings of the respondent passed respectively in
TIN 33693303144/07-08 dated 7.7.2015, TIN 33693303144/08-09
dated 7.7.2015, TIN 33693303144/09-10 dated 8.7.2015 and TIN
33693303144/10-11 dated 8.7.2015 and quash the same.

For Petitioner : Mr. N. Murali

For Respondent : Mr. Manohar Sundaram, AGP

COMMON ORDER

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

2. The petitioner, who is a registered dealer on the file
of the respondent under the provisions of the Tamil Nadu Value
Added Tax Act, 2006 (hereinafter referred to as the Act) and the
Central Sales Tax Act, 1956, has filed the above writ petitions
challenging the orders of assessment for the years 2007-08 to
2010-11. For the purpose of disposal of these writ petitions, it
would suffice to take note of the following facts :

3. The officials of the Enforcement Wing visited the
petitioner's place of business on 17.9.2012 and 18.9.2012.
During the course of inspection, it appears that the income tax
assessment files maintained by the petitioner in their factory

premises were seized and the Enforcement Wing officials pointed out that in the income tax returns, the petitioner reported higher turnover. When the proprietor of the petitioner was questioned and the statement was recorded, it came to light that the returns indicating higher turnover were filed before the Income Tax Authorities only with an intention to receive a bank loan and that they did not represent the actual turnover of the petitioner for the relevant assessment years.

4. Based on the report submitted by the Enforcement Wing Officials, the respondent issued notices proposing to revise the assessments for the concerned years apart from proposing to levy penalty under Section 27 of the Act. These notices were dated 8.9.2013. However, along with the notices, the orders of assessment dated 18.10.2013 were passed and communicated to the petitioner. Therefore, the petitioner approached this Court challenging the orders of assessment on the ground that the petitioner had no opportunity to file their objections to the notices dated 8.9.2013 and that the assessment orders, having been passed without affording an opportunity to the petitioner, are liable to be set aside.

5. The writ petitions filed by the petitioner earlier in W.P.Nos.1350 to 1353 of 2014 were disposed of by a common order dated 21.3.2014 by directing the petitioner to submit their objections to the pre-assessment notices within a stipulated time and on receipt of the same, the respondent was directed to assess the tax liability in accordance with law.

6. Accordingly, the petitioner filed their objections on 4.4.2014. In the said objections, the petitioner reiterated that the higher turnover was shown in the balance sheet and income tax was paid on the same in order to avail a bank loan from the Indian Overseas Bank and in order to fund the working capital to run the business, which was really under severe financial crunch. It was further stated that no sales suppression or stock variation was ever made out by the Authority concerned at any point of time and that the petitioner never involved in any activity resulting in any sales suppression or non payment of tax.

7. The petitioner further stated in their objections that they had been maintaining the stock register in the place of business and factory and produced all documents before the Enforcement Wing officials, who have not considered the same and requested the Assessing Officer to afford an opportunity of personal hearing so as to enable them to produce stock register and in order to prove that there is no stock difference as alleged by the Enforcement Wing officials. It was also pointed

out that the Enforcement Wing officials did not make out any stock variation at the time of inspection, as there was no stock variation at all, that the books of accounts were available with their Accountant and that they requested time to produce the same before the Enforcement Wing officials, which were not considered.

8. The Assessing Officer, after affording an opportunity of personal hearing, framed the assessments by orders dated 7.7.2015 and 8.7.2015, which are impugned in these writ petitions.

9. On a perusal of the impugned orders of assessment, it is seen that the only reason for confirming the proposals in the pre-assessment notices is on the ground that the petitioner has not been able to produce any documentary evidence in proof of their contention that the sales reported in the balance sheet for income tax purposes was inflated for them to avail a bank loan.

10. The petitioner's case is that he is an illiterate person and not aware of the procedure and the documents, which he has to produce before the Assessing Officer to convince the Assessing Officer that what was in the returns filed under the Income Tax Act was inflated sales statistics only for the purpose of obtaining a bank loan. The petitioner craves one more opportunity to enable him to produce relevant records to establish that there is no sales suppression. Furthermore, the learned counsel for the petitioner submitted that the loan availed by the petitioner from the Indian Overseas Bank has been completely cleared and a certificate to that effect has been issued by the bank, which certificate has been duly registered as doc.No. 3322 of 2013. That apart, the learned counsel submitted that the electricity consumption would clearly establish that there is no sales suppression and that what had been shown in the books are correct statistics and the Authority concerned may be directed to consider the same.

11. At this stage, it would be relevant to take note of the judgment of the Hon'ble Division Bench of this Court (to which, I am a party) in the case of Prasad Properties and Investments (P) Ltd. Vs. State of Tamil Nadu [(2014) 75 VST 343]. In the said decision, the tax case revisions were filed against the orders passed by the Sales Tax Appellate Tribunal and two of the questions, which were framed, were

(i) whether the Appellate Tribunal, as a final fact finding authority, was justified in ignoring the evidences produced by the petitioner to show that there was no sale effected by them

as shown in the invoices and hence, there was no sales suppression ? and

(ii) whether the Appellate Tribunal was correct in confirming the levy of tax on the petitioner assuming that the transaction per se (bill discounting) is a sale, as then the liability to sales tax would be on the first seller and not the petitioner ?

12. In the said decision, this Court took into consideration the factual aspects, verified the records and held as follows :

"Thus, with the available materials, when we looked at the facts of the case, it is evident, particularly from the confirmation letters of the Indian Bank, as regards the granting of credit in favour of the suppliers and the bills discounted for the purchase of raw films by the assessee. The assessee had noted this transaction as loan in the books of accounts. Read in the context of the factual absence of any block of raw films at the time of inspection and the affidavit filed from the various suppliers as well as the Indian Bank on the proceedings taken against Indian Bank on the bogus transactions, we can only draw an inference that the contentions of the assessee merited acceptance by this Court. We may point out that the Sales Tax Appellate Tribunal had not adverted to the facts as stated above on the other hand, it had relied on the decision of this Court reported in [(1993) 4 MTCR 419] and held that the case is not substantiated by the assessee.

The Revenue does not dispute the fact that there is a charge sheet filed by the CBI Authorities as against the Indian Bank in granting loans or offering discounting on sham documents, yet the Sales Tax Appellate Tribunal rejected the assessee's case on the ground that no reliance could be placed on the charge sheet to decide whether there was sale transaction or not. Thus with the proceedings still pending before the Criminal Court on the allegation of fictitious loan transaction dealt with by the bank and one of the parties being the

assessee herein, we have no hesitation in setting aside the order passed by the Sales Tax Appellate Tribunal in so far as the appeals filed by the assessee are concerned."

13. Thus, the Assessing Officer is entitled to consider the records independently de hors the fact as to what was reported before the Income Tax Authorities.

14. At this stage, it would be beneficial to refer to the decision of this Court in the case of State of Tamil Nadu Vs. Indian Crafts and Industries [(1970) 25 STC 466] wherein the Hon'ble Division Bench held that the morality and intention of an assessee does not enter into the field of adjudication in taxing law and that if an assessee can, by a process, which is acceptable in law, avoid or evade taxation, he can do so.

15. In the light of the above, the petitioner's right to establish before the Assessing Officer by producing records to show that there was no sales suppression, cannot be foreclosed merely on the ground that he had reported higher turnover in the income tax returns. Considering the facts and circumstances of the case, this Court is inclined to give one more opportunity to the petitioner to produce necessary records before the respondent to establish the actual sales.

16. In the light of the above reasons, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent shall issue a notice calling upon the petitioner to appear for a personal hearing, during which, the petitioner should produce documents to prove their contention that the sales turnover reported in the balance sheet under the Income Tax Act is in fact inflated for the purpose of obtaining a loan from the bank and after considering the documents, which the petitioner may produce during the course of personal hearing, the respondent shall complete the assessment on merits and in accordance with law. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

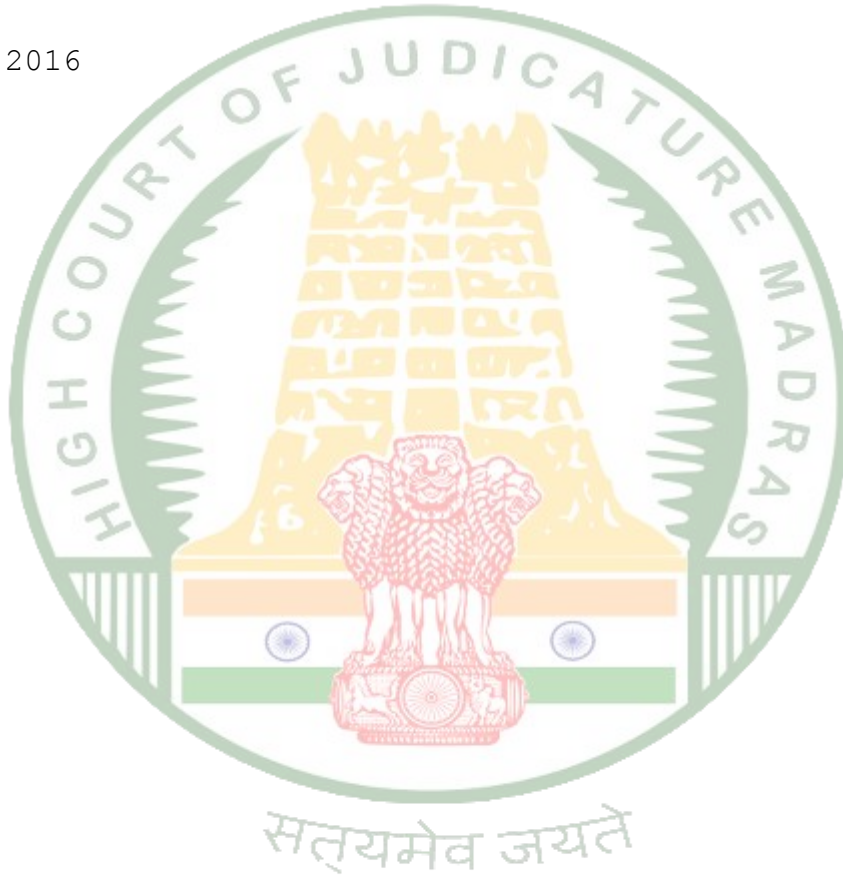
The Assistant Commissioner, Krishnagiri Assessment Circle,
Krishnagiri-1.

1 cc to The Special Government Pleader (Taxes)

5 cc to M/s.N.Murali, Advocate, sr.33081

WP.Nos.24216 to 24219 of 2015
& MP.Nos.1, 1, 1 and 1 of 2015

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