

In the High Court of Judicature at Madras

Dated : 07.6.2016

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition Nos. 19007 to 19013 of 2016
and WMP. Nos. 16560 to 16573 of 2016

Shri Coimbatore Jewellers India
Private Limited, rep. by its
Managing Director K.R. Premnath ... Petitioner in all the WPs

Vs

The Assistant Commissioner (CT),
Bazaar Assessment Circle, Salem. ... 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
records on the files of the respondent respectively in TIN :
33342782980/2012-13, TIN : 33342782980/2013-14, TIN :
33342782980/2014-15 dated 28.4.2016 and TIN : 33342782980/
2011-12, TIN : 33342782980/2012-13, TIN : 33342782980/2013-14
and TIN : 33342782980/2014-15 dated 9.5.2016 and quash the same.

For Petitioner : Mr. N. Sriprakash

For Respondent : Mr. Manohar Sundaram, AGP

COMMON ORDER

Mr. Manohar Sundaram, learned Additional Government Pleader
takes notice for the respondent. Heard both. Since common issues
are involved in these writ petitions, by consent, the writ
petitions are heard together and disposed of by a common order.

2. The petitioner is a registered dealer under the
provisions of the Tamil Nadu Value Added Tax Act, 2006
(hereinafter referred to as the TNVAT Act, 2006) and the Central
Sales Tax Act, 1956. The petitioner is primarily engaged in the
business of manufacture and sale of gold ornaments and silver
articles and anklets. The petitioner is also engaged in the
trading of diamonds/diamond fixed ornaments and gold bullion.

3. The challenge in these batch of cases could be divided
into two. The first three writ petitions namely W.P. Nos. 19007 to

19009 relate to the assessment years 2012-13 to 2014-15. The other four cases are almost identical excepting the fact that they relate to the assessment years 2011-12 to 2014-15.

4. The impugned orders are being challenged on the ground of abdication of the powers of an Assessing Officer and on the principles of violation of natural justice and non application of mind. For the purpose of considering the correctness of the grounds raised by the petitioner, it may not be necessary for this Court to go into the merits of the assessment made on the petitioner and it would suffice to take note of the following facts:

5. For the assessment years 2012-13 to 2014-15, show cause notices were issued to the petitioner on 28.9.2015 wherein the respondent pointed out the defects in the returns filed by the petitioner, held that the petitioner had wrongly availed input tax credit and proposed to levy penalty at 150% under Section 27 (4) of the TNVAT Act, 2006. The petitioner submitted their reply on 15.10.2015, in which, apart from taking into consideration the allegations made in the notice, the petitioner contended that the input tax credit availed by them was justified and specifically sought for a personal hearing so as to enable them to meet objections and make good their claim.

6. To establish that the explanation was received in the office of the respondent, the petitioner has filed a copy of acknowledgment signed by an officer attached to the respondent - Department, which shows that the letter dated 15.10.2015, along with two enclosures, were received on 23.10.2015. Thus, if the explanation has been received in the office of the respondent, the next stage of the matter should be that the respondent ought to have afforded an opportunity of personal hearing to the petitioner, examined the books of accounts and records that may be produced by the petitioner and proceeded to pass an order.

7. Though the explanation has been received in the office of the respondent on 23.10.2015, for quite some time, no action appears to have been initiated. The impugned orders of assessment came to be passed only on 28.4.2016, in which, it has been stated that the petitioner had not filed any objections to the proposal for revision of assessment. This statement is factually incorrect and the petitioner has been able to establish before this Court that the respondent had received the explanation along with enclosures on 23.10.2015. This is sufficient to hold that the impugned orders dated 28.4.2016 relevant to the assessment years 2012-13 to 2014-15, which were challenged in W.P.Nos.19007 to 19009 of 2016, are untenable and call for interference.

8. With regard to the other four writ petitions, which pertain to the assessment years 2011-12 to 2014-15, the petitioner was issued pre-assessment notices dated 24.8.2015. These notices were pursuant to an inspection conducted by the Enforcement Wing Officials, who had taken for audit the accounts in the business premises of the petitioner and they had pointed out certain defects and based on the report of the Enforcement Wing, the respondent sought to revise the assessment for years 2011-12 to 2014-15.

9. According to the petitioner, the statement, which was prepared by the Enforcement Wing officials, was pre-prepared. The person, who was in the business premises, was compelled to sign the statement wherein there was a recording as if defect Nos.5 and 6, relating to stock difference and compounding of offence for alleged non maintenance of input tax credit adjustment register, were admitted by the petitioner.

10. It is brought to the notice of this Court by the learned counsel for the petitioner that though the signature was obtained in such statement, the petitioner had sent a communication on 5.3.2015 to the Inspection Group requesting for correction in the statement recorded more particularly with regard to the alleged admission in paragraphs 5 and 6 of the statement. Nevertheless show cause notices dated 24.8.2015 were issued and the petitioner filed their reply dated 10.9.2015, which has been received in the office of the respondent on 21.9.2015 as evident from the acknowledgment given. In the said explanation, the petitioner specifically pleaded for an opportunity of personal hearing, so that they will be able to place all points. Admittedly, no opportunity of personal hearing was granted to the petitioner. But, the respondent proceeded to conclude the assessment proceedings and passed the orders dated 9.5.2016.

11. As observed earlier, this Court has not gone into the merits of the case, but is examining the correctness of the impugned orders as to whether they satisfy the settled legal principles pertaining to how an Assessing Authority has to proceed with the matter. In the orders of revision of assessment, the respondent has stated that the petitioner accepted the observations of the Enforcement Wing Officials in their statement. This is stated to be a wrong statement of fact, since, at the earliest point of time i.e. on 5.3.2015 itself, the petitioner submitted their objections requesting for correction in the statement recorded on 17.2.2015.

12. What is more damaging is that the respondent stated that it is the legitimate duty of the Assessing Officer to

implement the audit report by way of revision of assessment and that he need not again verify the accounts, as pointed out by the dealer, since the defects were already accepted by the petitioner.

13. Two things emanate from the observations. Firstly, the Assessing Officer came to the conclusion that there was an admission of the defects, which are seriously disputed by the petitioner. The second is that the Assessing Officer was of the opinion that he is duty bound to accept and implement the audit report. These observations are totally erroneous in the light of the settled legal principles as to how the Assessing Officer has to conduct himself.

14. At this stage, useful reference could be made to a decision of this Court in the case of State of Tamil Nadu Vs. A.N.S. Gupta & Sons [(2011) 38 VST 45] wherein the Hon'ble Division Bench, after taking into consideration several other decisions including the decision of the Supreme Court, held as follows :

"We are also governed by a decision of the Division Bench of this Court in K.S.Shivji & Co. Vs. Joint Commercial Tax Officer reported in (1965) 16 STC 769 (page 771 in 16 STC) :

'.....We need hardly observe that the assessment proceedings are quasi judicial in nature and therefore, the Assessing Authority has an independent duty to carefully scrutinize the materials for assessment and satisfy himself, thoroughly uninfluenced by any direction of superior officers and assess the tax payable on that basis....'

We are completely in agreement that the assessment proceedings are quasi judicial in nature and therefore, the Assessing Authority has an independent duty to carefully scrutinize the materials for assessment and satisfy himself thoroughly, uninfluenced by any direction of superior officers and assess the tax payable on that basis. In the present case, as rightly pointed out by the Tribunal, the Assessing Officer simply taking into consideration the report of the Enforcement Wing has not applied its mind, but simply has been carried away by the report of the Enforcement Wing and has come to the

conclusion. As stated earlier, the Assessing Officer should have decided the matter on the merits independently unbiased and uninfluenced by any other subsequent factors and also should not have stated that it is not a court of law."

15. Thus, a report from the Enforcement Wing may be a starting point for issuance of a notice. But, the Assessing Officer, being a Statutory Authority, on issuance of notice proposing revision of assessment, is required to call for objections from the dealer and if the dealer places objections, then the Assessing Officer is duty bound to decide the matter on merits independently unbiased and uninfluenced by any other factor.

16. Therefore, the observation made by the respondent in the impugned orders that he is duty bound to implement the audit report is a perverse observation and deserves to be set aside. Secondly, the admission of guilt, if held to be the sole basis for rejecting the dealer's case, the settled legal principle is that the admission should be candid and unequivocal. In the instant case, the petitioner has not only stated that the pre-prepared statement was compelled to be signed, but also stated that they gave their objections on 5.3.2015 for correction of the statement, which was recorded on 17.2.2015. Therefore, the respondent wrongly proceeded as if the petitioner had admitted the defects pointed out by the Enforcement Wing. All these issues could have been very well clarified, had the respondent afforded an opportunity of personal hearing to the petitioner, especially when the petitioner had sought for the same specifically in their explanation.

17. At this stage, it would be beneficial to refer to the judgment of the Hon'ble Division Bench of this Court in the case of SRC Projects Pvt. Ltd. Vs. CCT [(2010) 33 VST 333] wherein it was held as follows :

"...but in cases where dealer seeks for a personal hearing, such dealer should be afforded the same in all cases where the Commissioner proposes to record a finding, which is adverse to the dealer and such adverse order to the assessee can only be made after giving the assessee a hearing."

18. This being the settled legal position, the respondent ought to have granted an opportunity of personal hearing. While passing the impugned orders, there is a recording to the effect

that there is no need for personal hearing to discuss the subject as to the objections raised by the petitioner. This is another serious error committed by the respondent and is totally wrong. This observation made by the Assessing Officer is not only erroneous, but also appears to have been made in ignorance of the settled legal principles. Hence, on the above technical ground, the impugned orders call for interference.

19. Accordingly, 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 afford an opportunity of personal hearing to the petitioner, examine their objections as well as records that they may produce and independently decide the matters without in any manner being influenced by the observations made by the Enforcement Group. No costs. Consequently, the above WMPs are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Bazaar Assessment Circle, Salem.

1 cc to M/s.N.Inbarajan, Advocate, sr.30178

1 cc to Special Government Pleader, (Taxes), sr.30373

WP.Nos.19007 to 19013/2016&
WMP.Nos.16560 to 16573/2016

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