IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 12.09.2016
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.P.Nos.29955 to 29961 & 29962 to 29968 of 2015 and
M.P.Nos.1 of 2015 in
W.P.Nos.29955 to 29961 & 29962 to 29968 of 2015

M/s.Steel Shoppe
Rep.by its Authorised Signatory,
No.20/46-D-2, Shanthinagar,
Opp.Raghavendra Theatre, (in WPs.29955 to 29961/15)
Hosur 635 19 .. Petitioner
(M/s. Steel Hykermart India Pvt Ltd
rep. by its Authorised signatory

Vs.

The Assistant Commissioner
(CT), Hosur (North)
Krishnagiri byepass Road,
Hosur 635 109 .. Respondent in All WPs

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondent in TIN No.33823364716/2014-15 dt:19/8/2015 and quash the same to all for the records of the respondent in TIn. Nos.33823 364716/2013-14,33823364716/12-13,33823364716/11-12,33823364716/10-11,33823364716/09-10,33823364716/08-09,33603323224/14-15,33603323224/13-14,33603323224/12-13,33603323224/11-12,33603323224/10-11, 33603323224/09-10 & 33603323224/08-09, dt.19.08.2015 respectively and quash the same as prima-facie non-speaking and perfunctory, and on the dictates and sole ex parte opinion of the enforcement officers instead of being on the enquiry and satisfaction of the respect. herein vitiated by conjecture and surmise, besides being in gross violation of rules of natural justice and pass such order.

For Petitioner : Mr.C.Natarajan, SC
for Ms.C.Rekha Kumari

For Respondent : Mr.S.Kanmani Annamalai, AGP (T)
Assisted by
Mr.K.Venkatesh,GA(T)

COMMON ORDER

Heard Mr.C.Natarajan, learned Senior Counsel assisted by Ms.C.Rekha Kumari, learned counsel appearing for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader (T) assisted by Mr.K.Venkatesh, learned Government Advocate (T) appearing for the respondent.

2.Since, the issue involved in all these writ petitions is identical, they were heard together and disposed of by way of this common order, with the consent of the learned counsel on either side.

3.The petitioner 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 TNVAT Act") and the challenge in these writ petitions is to the assessment orders under the TNVAT Act as well as the Central Sales Tax Act (hereinafter referred to as "the CST Act") for various assessment years. Since, the issues which have been raised by the respondent in all the assessment orders pertaining to various years are identical, it may not be necessary to refer the individual case as the pattern of assessment is virtually same.

4.The place of business of the petitioner who is Dealer in steel sheets located at Hosur, was inspected by the officials of the Enforcement Wing on various dates and based on which, inspection reports were drawn which paved way for the issuance of pre-revision notices. In respect of the same, the petitioner had given statements before the Enforcement Wing on various dates raising various contentions and pointing out about the genuineness of the transactions especially, when they dealing with Public Limited Companies such as Essar Steel, Jinda Steel Authority of India, etc. Along with the statements, to support their contentions before the Enforcement officials, the petitioner had enclosed the CST Assessment Order copy 2008-2009; Letter of "C" Form submission 2012-13; High Court order & Letter and Kuber Entp. And Habeeeba Steel Traders Relevant VAT Returns; Copies of Invoices; Copies of VAT Returns and buyers and sellers; Annexure - 5 Form Nov, 2013 to Oct-2014, with monthly returns and the audited balance sheet March, 2014 and trading A/c of Current year.

5.In the show cause notice, the respondent proposed to revise the assessment on the following grounds viz., (1) Incorrect claim of ITC; (2) Sales Suppression; (3) Stock variation; (4) Tax suppression on consignor & consignee movement and (5) Penalty. The petitioner submitted its objections on

26.06.2015, furnishing the details and stating that every purchase invoice is accounted by seller and buyer and same transactions are reflecting in both parties VAT returns, then, where is the question of “not paying tax on purchase” arises ? And if there is enough credit available to take care of output tax payment then there is no question of tax liabilities. Further, the petitioner stated that the purchases made from the dealer in question has been accounted properly, i.e., invoice number, vehicle number (private vehicle) through which the goods were transported to the petitioner's premises in the computerised outward stock register maintained by them and the petitioner have also entered the receipt of stock in our computerized inward register and the stock register maintained by the petitioner has been verified by the Enforcement Wing Officials and as such the allegation that the purchases of goods without actual handling is unfounded allegation.

6.The petitioner has further stated that the payment for the purchases were made through Bank account and as such there is no evidence to disprove their claim. Every sale invoice is accounted for by the buyer and seller with proper sale invoices and required documents during the movement of goods and same entries are reflecting in the monthly returns of the seller's and buyer's under VAT Act with proof of payments made through the Bank account. Further, it was pointed out that simultaneously, notice has been issued to the private limited company also. Therefore, the petitioner prayed before the respondent to conduct a proper enquiry as required under Section 27(1)(a) of TNVAT Act, to verify the books of accounts for a personal hearing after conducting enquiry and checking the books of accounts.

7.Along with the objections dated 26.06.2015, the petitioner also enclosed the sales/purchases summary; profit and loss account for the relevant period; copy of stock statement and copy of job work statements. Pursuant to the objections submitted by the petitioner, notices were issued to the petitioner calling upon him to appear for the personal hearing which opportunity was availed by the petitioner and during the course of the same, the petitioner has produced the documents such as sale register; purchase register; account confirmation copy of M/s.Steel Shoppe, Hosur; account confirmation copy of M/s.Steel Hypermarket India Pvt. Ltd., Hosur and Material inward & outward register. Thus, in the light of the stand taken by the petitioner before the respondent in their objections and the documents which were placed along with the petitions and at the time of personal hearing, the exercise which was required to be done by the assessing officer is to conduct an enquiry.

8.Pre revision notices were issued to the petitioner disbelieving the transactions between the petitioner and M/s.Steel Hypermart India Pvt. Ltd. Admittedly, the petitioner which is a proprietorship concern is also a sister concern of the private limited company. The petitioner took a specific stand that the transactions cannot be disbelieved for the reason assigned by the respondent as they had sufficient documents to prove that the transactions were genuine and bona fide. In order to establish that the transaction is proper and properly supported by the documents, the learned Senior Counsel would refer to a statement of M/s.Steel Hyper Mart showing movement of goods from the said private company limited to the petitioner and to other customers. By way of illustration, Bill No.1120 dated 23.01.2013 was referred pertaining to a quantity of 18.240 metric tonnes of CR Sheet which was transported through vehicle No.KA 01 AB 1820 and the bill number which was drawn by the petitioner is Bill No.800 in favour of M/s.Vimal Industries, Sriperumbudur dated 23.01.2013 was transported by the same lorry. These bills are correlated with the invoice dated 23.01.2013 bearing Invoice No.1120 raised by the M/s.Steel Hypermart India Pvt. Ltd., showing the vehicle number as well as the tax invoice raised by the petitioner in favour of M/s.Vimal Industries which also reflects the same vehicle number. Therefore, it is submitted that the petitioner has got all documents to establish that the transactions are genuine and not a circular transaction as alleged by the respondent.

9.However, the respondent while completing the assessment, in my considered view, in an arbitrary and cryptic manner pointed out that the petitioner has not established the movement of goods by producing documents. In fact, the other issues are also correlatable to the said issue and therefore, if the finding rendered by the authority on the first issue is not correct then, automatically, it will have a cascading effect on the other issues as well.

10.It is not a case where the petitioner is not able to furnish details. But, the petitioner has furnished the details which have been brushed aside by the respondent while completing the assessment. This is evident from the stand taken in the counter affidavit. In paragraph No.10 of the counter affidavit, the respondent has stated as follows:-

> "10........
> Though certain records were produced at the time of personal hearing, however, those necessary for establishing the genuineness of the transaction and the claim of the Input Tax Credit have been withheld and have not been produced. The petitioner failed to

> produce the bank statement, purchase invoices, lorry receipts, the inward and outward register the details of vehicles engaged in the transport. Though the petitioner would contend that certain 'C' Forms were produced for the purpose of substantiating some of their transactions, on verification with the checkpost entries it transpires that the 'C' Forms as produced do not correlate with any checkpost entries.”

11.Thus, from the above, it is crystal clear that the petitioner has produced the relevant documents at the time of personal hearing but, the respondent has stated that the records produced by the petitioner are insufficient to establish the genuineness of the transactions. If that is the stand taken by the respondent, then, there was a duty cast upon the respondent to discuss about the nature of the documents produced by the petitioner and how he proposes to disbelieve those documents as to whether all the documents are liable to be rejected, etc.

12.Curiously, at one point of time, part of the transactions have been recognised by the respondent Department. The transaction made by the petitioner to a company at Sriperumbudur is not disbelieved at the hands of the purchasing dealer. In such circumstances, the respondent appears to have not conducted a thorough enquiry in to the matter, as it appears that the documents are voluminous and in a summary manner, the assessment was done for the 7 assessment years.

13.It is further pointed out by the learned Senior Counsel that with regard to the turn over omission, which appears for all the assessment years, the petitioner has stated before the Enforcement Wing Officials themselves that they are unable to cull out the details from bare perusal of the figures. Therefore, even after the issuance of show cause notice, while submitting their reply they sought for details such as Bill number etc.

14.Even this request has been rejected by the Assessment officer, as an after thought. Since, the respondent has already initiated action, he is bound to conduct a thorough and complete enquiry into the matter and any slipshot or cursory perusal of the documents cannot be appreciated since, the proceedings are under a taxation statue.

15.Thus, for all the above reasons, this Court is fully convinced that the impugned assessment has to be done in a proper manner after considering all the documents to be submitted by the petitioner. The petitioner shall be furnished the documents sought for and the petitioner is also entitled to produce the books of accounts, etc.

16.In the result, the writ petitions are allowed and the impugned orders are set aside and the matters are remanded back to the respondent for fresh consideration who shall afford an opportunity of personal hearing to the representative of the petitioner and the petitioner shall be permitted to furnish relevant documents, if any, and re-do the assessment in accordance with law. No cost. Concquetly connected misc petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

jbm
To

The Assistant Commissioner
(CT), Hosur (North)
Krishnagiri byepass Road,
Hosur 635 109

+2 CC to Spl GP(T) Sr.No.51879 & 51878
+2 CC to M/s. C. Rekhakumari Sr.NO.No.51802 & 51803

W.P.Nos.29955 to 29961 &
29962 to 29968 of 2015

MD : 19/10/2016