IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.20364 to 20366 of 2016 (3 cases)
and
W.M.P.Nos.17485 to 17487 of 2016

Floor Fixers
rep. by its Partner,
Mrs.D.Asha
No.6, Ranjith Road,
Kotturpuram, Chennai - 600 085. ...Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer,
Kotturpuram Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ...Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for impugned proceedings of the respondent, passed in TIN No.3330086366/2009-10, 2010-11, 2011-12, respectively, dated 13.05.2016, and to quash the same, and further, to direct the respondent to redo the assessment in accordance with law.

For Petitioner : Mr.N.Murali
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr.N.Murali, learned counsel appearing for the petitioner, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice for the respondent, and perused the materials placed on record.

2. Since the issue involved, relief sought for, and the parties in all the Writ Petitions are one and the same, the Writ Petitions are taken up together for final disposal, with the consent of the learned counsels 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

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Act'), and the challenge in these Writ Petitions is to the assessment orders passed under the said Act, for the years 2009-10, 2010-11 and 2011-12.

4. Pursuant to the surprise inspection, conducted by the Officials of the Enforcement Wing at the place of petitioner's business premises, a report was filed by the Deputy Commissioner (CT) Enforcement South, dated 21.09.2011, pointing out certain defects. It is not known as to what is the nature of the direction issued thereunder, nor, as to the effect of such direction, the Assessing Officer, being a Statutory Authority, is required to independently complete the assessment, in accordance with law. Based on the aforesaid report, the Assessing Officer issued a notice, dated 25.04.2014, calling upon the petitioner, to state as to why, the total taxable turnover should not be reassessed. In the meantime, the petitioner approached this Court, by filing Writ Petitions, in W.P.Nos.20298 to 20301 of 2014, which was disposed of by order, dated 31.07.2014. Subsequently, the petitioner submitted their objections, and from the records placed before this Court, it is prima facie clear that the Assessing Officer is convinced with the objections raised by the dealer, and sent a deviation proposal, dated 30.10.2015, to the Deputy Commissioner (CT) Enforcement South. This Court has been informed that submission of such deviation proposal is not provided for, either under the provisions of the TNVAT Act, or under the Rules, but, it is a procedure, being followed by the Department, and, how far such procedure being followed is legal, is in great doubt.

5. Be that as it may, the Assessing Officer/respondent, considered the objections filed by the petitioner, submitted a deviation proposal, dated 30.10.2015, thereby, disagreeing with the views expressed by the Deputy Commissioner (CT) Enforcement South , dated 21.09.2011.

6. When the Writ Petitions came for admission, i.e., on 16.06.2016, this Court, considering the fact that, seldom, the Assessing Officers exercise their independent powers, what they are normally expected to do, granted interim stay, and directed the learned Additional Government Pleader to get instructions in the matter. For better reference, the interim order is quoted hereinbelow:-

> "Heard Mr.N.Murali, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader for the respondent.
>
> 2. The impugned order of assessment has been passed by the Assessing Officer as total disregard to the settled legal

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principle and total abdication of the statutory duties of an Assessing Officer. In fact, the Assessing Officer had rightly submitted a deviation proposal, dated 30.10.2015. However, it appears that jurisdictional Deputy Commissioner (CT) Zone VII sent a communication to the Assessing Officer on 25.01.2016. Presumably, based on such communication, the Assessing Officer has passed the impugned order. But, while doing so, she has not referred to what is the direction or order issued by the Deputy Commissioner in the communication dated 25.01.2016, but has given other reasons such as non-production of lorry receipts, delivery challan etc., Prima facie, the finding rendered by the Assessing Officer is a false statement, since Assessing Officer herself was satisfied that the petitioner has been able to establish a case and that is the reason why she sent a deviation proposal dated 30.10.2015.

3. In the light of the above, there will be an order of Interim stay.

Post the matter on 23.06.2016."

7. Pursuant to the above direction, learned Additional Government Pleader has obtained instructions from the respondent-Department, and from the instructions, it appears that the Deputy Commissioner (CT) Enforcement South, in response to the deviation proposal, has issued a two line order, directing the respondent/Assessing Officer to comply with his communication, dated 21.09.2011. If such communication was sent by the Deputy Commissioner (CT) Enforcement South, the same requires to be deprecated, for the reasons to be mentioned infra. The Deputy Commissioner (CT) Enforcement South, being a Superior Officer, should be in a position to guide the Assessing Officer on legal aspects, rather, in the instant cases, he only seeks to enforce his proposal on the Assessing Officer. This, undoubtedly, cannot be done on an Assessing Officer, because, under the scheme of the Act, the Assessing Officer has to independently apply his mind, and, he cannot be solely guided by any external factors, and, in particular, the report of the Enforcement Wing Officials.

8. The manner, in which, the Assessing Officer has to function, has been pointed by 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], and the relevant

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portion of the decision is quoted hereinbelow:-

> "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. We hold that the assessments are not sustainable in law."

9. The said decision was followed by me, in the case of Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri [(2015) 81 VST 560], wherein, it was pointed out that the Assessing Officer cannot be solely guided by the proposals given by the Inspecting Officers, but has to independently apply his mind and discharge duties enshrined on him under the provisions of the Act, otherwise, it would amount to abdication of his statutory duties. However, this Court is not advocating a principle that the report of the Enforcement Wing has to be totally scrapped, and at best, it can be treated only as a material for causing notice on the dealer to clarify certain issues. In the instant cases, it is prima facie clear that the respondent/Assessing Officer is convinced with the explanation/objection/reply offered/filed by the petitioner along with supportive documents, disagreeing with the views expressed by his Superior Officer, and sent a deviation proposal, however, the same having been rejected by the Deputy Commissioner (CT) Enforcement South with directions to comply with the proposal, dated 21.09.2011, the Assessing Officer confirmed the proposal and passed the impugned orders.

10. At the risk of repetition, this Court states that the Assessing Officer, under the Act, has been conferred powers to independently consider the matter, and, at best, the information furnished by the Enforcement Wing, or Inspecting Officer, could be considered to be in the nature of a first information, and based on such information, if the Assessing Officer proposes to issue a show cause notice, then, he is required to call for explanation from the dealer, and then, it is incumbent upon the Assessing Officer to give his/her own independent reasons, and to pass orders, either accepting the case of the dealer, or rejecting it. However, this basic principle, as to how the assessment has to be made, has not been followed in the instant cases, and since the assessment has been made by the respondent/Assessing Officer, blindly accepting the proposal sent by the Deputy Commissioner (CT) Enforcement South,

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the impugned orders have to be held to be not sustainable, calling for interference.

11. Accordingly, the Writ Petitions are allowed, the impugned orders are quashed, and the matter is remanded to the respondent for fresh consideration, who shall independently consider the petitioner's objection, without being, in any manner, influenced by the proposal sent by the Deputy Commissioner (CT) Enforcement South, dated 21.09.2011, and redo the assessment after affording opportunity of personal hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To
The Commercial Tax Officer,
Kotturpuram Assessment Circle,
No.46, Greenways Road, Chennai - 600 028.

+1 cc to Special Government pleader taxes sr 43860
+3 ccs to Mr.N.Murali Advocate sr 43813

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(3 cases)

aa30/08/2016

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