

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.34234 to 34240 of 2015
and
M.P.Nos.1, 1, 1, 1, 1, 1 & 1 of 2015

Sri Ramakrishna Dyeing Works
rep.by its Partner
Radhakrishnan, No.136, Megricar
Road, RS Puram, Coimbatore 641002. Petitioner in all W.Ps

..Vs..

The Commercial Tax Officer,
Commercial Tax Department,
R.S.Puram (East) Circle,
Coimbatore - 18. Respondent in all W.Ps

Prayer: Writ petitions filed under Article 226 of the
Constitution of India praying for writ of certiorarified
mandamus calling for the records pertaining to the impugned
order passed by the respondent in TIN-33131940020/2008-09 ; TIN-
33131940020/2009-10 ; TIN-33131940020/2010-11 ; TIN-
33131940020/2011-12 ; TIN-33131940020/2012-13 ; TIN-
33131940020/2013-14 and TIN-33131940020/2014-15 dated
06.07.2015, quash the same and direct the respondent to pass
fresh orders after considering the reply dated 17.07.2015 and
afford an opportunity of personal hearing to the petitioner.

For Petitioner in all : Mr.T.Bashyam
writ petitions

For Respondent n all : Mr.S.Kanmani Annamalai,
writ petitions Additional Government Pleader

COMMON ORDER

Heard Mr.T.Bashyam, learned counsel for the petitioner and
Mr.S.Kanmani Annamalai, learned Additional Government Pleader
for the respondent and with the consent on either side, the writ
petitions are taken up for disposal.

2. In all these writ petitions the petitioner challenges
the orders of Assessment passed under the provisions of the
Tamil Nadu Value Added Tax Act 2006 [TNVAT Act] for the
Assessment Years 2008-2009 to 2014-2015. The petitioner is
carrying on the business of 'dyeing' and registered as a dealer

on the file of the respondent under the provisions of TNVAT Act and the Central Sales Tax Act, 1956 [CST Act]. The petitioner would state that they had purchased yarn from the local registered dealers and carrying on dyeing process in their factory and effecting local sales. Apart from that, the petitioner claims to have sent certain quantity of Yarn to their factory in Kerala to carry on dyeing process and it is again brought back to Tamil Nadu for sale. The petitioner's place of business was inspected by the Enforcement Wing Officials between 09.09.2014 and 12.09.2014 and during the course of such inspection, certain defects were noticed. These defects were consolidated in the form of a report and it appears to have been forwarded to the respondent, who is the Assessing Officer of the petitioner. On receipt of the report, the respondent issued pre-revision notices to the petitioner on 07.04.2015 pointing out that the petitioner has purchased dyes and chemicals and cotton yarn from the local registered dealers and also availed Input Tax Credit and the entire goods purchased, were sent to the dyeing factory at Agali in Kerala state for dyeing and conversion of yarn into hank yarn. After such process it is brought back to Tamil Nadu and sold locally. As the dyeing was done in other state and the finished goods being hank yarn, sold locally which is exempted from tax, the petitioner is not entitled to avail Input Tax Credit. Therefore, the respondent proposed to reverse the same based on the above report of the Enforcement Wing Officials. The respondent also proposed to hold that the petitioner is not entitled to adjust the Input Tax Credit towards the tax due and also proposed to impose penalty. It is not in dispute that the petitioner has received the pre-revision notices and the accountant of the petitioner/company has given several letters, requesting for time to file their objections in the Impugned Assessment Orders. The dates of those letters have been mentioned, viz., 10.05.2015, 05.06.2015 and 19.06.2015. However, in spite of sufficient time being granted, the petitioner did not file their objections and consequently, the respondent having left with no other option, confirmed the proposal in the pre-revision notices dated 07.04.2015 and passed the impugned Assessment Orders.

3. The petitioner would state that the impugned Assessment Orders have been passed in violation of principles of natural justice since opportunity of personal hearing was not granted to the petitioner. Furthermore, it is submitted that merely because the Enforcement Wing Officials have submitted a report, that cannot be the sole basis for taking a decision in the matter and the respondent being the Assessing Officer, has to take a decision uninfluenced by the report of the Enforcement Wing Officials. In this regard, reliance has been placed on the decision of this Court in the case of Madras Granites [146 STC 642] .

4. The learned Additional Government Pleader seeks to sustain the impugned order and submitted that in spite of

sufficient liberty being granted to the petitioner, the petitioner did not submit their objections and therefore, there is no error in the manner in which the impugned orders of assessment has been passed and if the petitioner is aggrieved, they should file an appeal as against the impugned orders.

5. It is no doubt true that the petitioner did not submit their objections. Nevertheless, when the proposed revision is to be done in accordance with the provisions of the TNVAT Act, it would be advisable for the respondent to afford an opportunity of personal hearing to the petitioner. The need for affording an opportunity of personal hearing was emphasized by this Court in the case of SRC Projects Pvt Ltd., Vs. The Commissioner of Commercial Taxes and another reported in 2008-09 [14] TNCTJ 220, wherein the Hon'ble Division Bench has held as follows:-

"....

26. Another judgment was also cited by the learned counsel for the appellant in the case of Jayam Traders V. Tamil Nadu Taxation Special Tribunal and others reported in 2004 [Vol.136] STC page 302 [Mad.]. In this case also, the learned Judges held that though section 28-A of the said Act does not in terms require a hearing to be given to a dealer who seeks the clarification, 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.

27. We also hold, in the facts and circumstances of this case, the impugned order by way of revision of assessment should not have been passed without giving the assessee an opportunity of personal hearing. But since the same has been denied, the impugned order is hereby quashed."

6. That apart, the impugned Assessment Orders have been passed solely based upon the report submitted by the Enforcement Wing Officials. It is settled legal position that the Assessing Officer, is an independent authority under the Act and he is bound to complete the assessment, taking into consideration the objections raised by the dealer. Therefore, the respondent would not be justified in merely adopting the report as such. However, in the instant case, the respondent cannot be fully faulted because the petitioner did not submit their objections in spite of sufficient time being granted.

7. The record of the proceedings show that at the time when the writ petition was entertained, an order of interim stay was granted subject to the condition that the petitioner pays 25% of the disputed tax for each of the Assessment Years. This conditional order has been complied with and the interim order has been extended until further orders, vide order dated 26.11.2015.

8. Considering the overall facts and circumstances of the case, this Court is of the view that one more opportunity can be granted to the petitioner to contest the matter on merit.

9. Accordingly, instead of setting aside the respective impugned orders of assessment, the petitioner is directed to treat the impugned proceedings as a Show Cause Notice for the respective Assessment Years and submit their objections within a period of fifteen days from the date of receipt of a copy of this order and on receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and independently complete the assessment and not solely be guided by the report of the Enforcement Wing Officials. The petitioner, during the course of personal hearing, is entitled to produce the relevant records and documents to substantiate their claim. After considering all the aspects, the respondent shall pass fresh orders of assessment in accordance with law. In the light of the fact that the petitioner had already paid 25% of the disputed tax for all the Assessment Years, no further coercive action shall be initiated against the petitioner till fresh orders are passed based on the above direction.

10. The writ petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To
The Commercial Tax Officer,
Commercial Tax Department,
R.S.Puram (East) Circle,
Coimbatore - 18.

+1cc to the Special Government Pleader(T), S.R.No.51178

W.P.Nos.34234 to 34240 of 2015

PUR(CO)

CA(21/09/2016)

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