IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos .23494 of 2016 to 23502 of 2016
and
W.MP.Nos.20138 to 20146 of 2016

W.P.No.23494 of 2016

M/s.Vishal Collection,
Represented by its Proprietor,
Mr.Mukesh Kothari,
1/1, Pettichettipuram,
East 1st Street,
Rayapuram,
Tirupur - 641 601. .. Petitioner in all WPs

Versus

1.The Assistant Commissioner (CT),
Tirupur Central - II Assessment Circle,
No.42, Kumaran Road,
Tiruppur-641 601.

2.The Commercial Tax Officer,
Group - I Enforcement (Central),
Coimbatore-641 018.

3.The Deputy Commissioner (CT),
Enforcement,
Commercial Taxes Building,
Coimbatore - 641 018.

4.The Joint Commissioner (CT),
Enforcement,
Commercial Taxes Building,
Coimbatore - 641 018. .. Respondents in all WPs

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent in TIN/33222463043/2007-2008 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 and quash the order dated 08.06.2016 as passed contrary to the provisions of the TNVAT Act and in the absence of any clinching evidence / incriminating records against the petitioner and also contrary to the principles of natural justice and further forbear the first respondent from passing a revised assessment order for the assessment year 2007-2008 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 under the TNVAT Act based on the directions given by the second, third and fourth respondents in view of the law laid down by the Division Bench of this Court in the case of Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Arisipalayam Circle reported in 146 STC 642, State of Tamil Nadu Vs. ANS Gupta & Sons reported in 38 VST 45 and also in the case of Amutha Metals Vs. Commercial Tax Officer, Mannady (East) Assessment Circle reported in 9 VST 478 and also in the case of M/s.Bhuvaneswari & Co. Vs. CTO & Others in W.A.Nos.521 and 522 of 2013.

For Petitioner in
all Writ Petitions: Mr.P.Rajkumar

For Respondents in
all Writ Petitions: Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

C O M M O N   O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner in all Writ Petitions and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of respondents in all Writ Petitions. With the consent of the learned counsel on either side, these Writ Petitions are taken up for final disposal.

2. The petitioner-Company is a manufacturer of hosiery garments as well as effecting sales of cloth and registered as a dealer on the file of the respondents under the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred as "TNVAT Act") and also under the Central Sales Tax Act, 1956 (hereinafter referred as "CST Act").

3. The place of business of the petitioner was inspected by the Enforcement Wing Officials of the Commercial Taxes Department on 18.01.2016, and certain defects were noticed and it appears that the Enforcement Wing Officials had prepared a report and forwarded the same to the first respondent-Assessing Officer, to revise the assessments for the years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 respectively. During the course of investigation by the Enforcement Wing Officials, a statement was recorded from the Proprietor of the petitioner. The allegation made against the petitioner was that on verification of the local sales of cloth and inter-State sale of garments with stitching charges paid, it is found that the

sale ratio of garments are very low and therefore, the Enforcement Wing Officials inferred that the hosiery garments sales within the State are camouflaged as cloth sales and therefore, they proposed that the entire cloth sale be disallowed and treated as hosiery garment sales and the tax has to be re-worked. For this allegation, the petitioner has stated that the charge that the sale ratio of garment is very low when compared to the local and inter-State sales of garments and stitching charges, is not supported by any comparative statement and it is vague and without such details, the petitioner cannot offer any remarks. It was further pointed out that the sales of hosiery garments within the State have been camouflaged as sales of cloth, is also not supported by any evidence or incriminating records to substantiate the claim of the Department. Therefore, the petitioner categorically stated that two allegations made against them are mere assumption and surmise and therefore, requested the Enforcement Wing Officials to drop the proposal for the years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

4. Admittedly, the petitioner does not know as to what was the report submitted by the Enforcement Wing Officials, which has been forwarded to the first respondent, which is an inter-departmental Communication and the petitioner has not been put on notice as to what direction was issued by the Enforcement Wing Officials to the first respondent. Be that as it may, the first respondent issued notices proposing to revise the assessments already completed and from a perusal of the notices, it is evidently clear that it is a verbatim repetition of the allegation made by the Enforcement Wing Officials against the petitioner, which has been recorded in the statement given by the petitioner to the Enforcement Wing Officials on 25.01.2016.

5. Thus, it is prima-facie clear that the Assessing Officer did not apply his mind while issuing the pre-revision notices and mechanically issued notices by verbatim repeating the allegations made against the petitioner by the Enforcement Wing Officials. On receipt of the notices, the petitioner submitted their objections, dated 25.05.2016 separately for all the assessment years. In the said objections, the petitioner pointed out that the first respondent has simply endorsed the findings of the Inspecting Authorities without looking into their objections and it goes without saying that the first respondent being a quasi-judicial Authority, has failed to apply his mind. That apart, it was stated that the notice dated 10.05.2016 is absurd and not going to serve any useful purpose. Placing reliance on the decision of the Hon'ble Division Bench of this Court in the case of Madras Granites P. Ltd., Vs. CTO, Arisipalayam Circle reported in 2006 (146) STC 642 (Mad), the petitioner stated that by

merely endorsing the findings of the Inspecting Authorities and implementing in-toto, the Assessment Proceedings which were issued without independent thinking by the authority, are condemnable. In the above objections, the petitioner requested the first respondent to issue fresh notice, if need be, on considering the objections to the findings placed before the Inspecting Authority in the petitioner's sworn statement dated 25.01.2016. However, in the impugned assessment orders, the first respondent in a most cryptic manner, confirmed the proposals in the notices, by stating that in the reply/objections filed by the petitioner, dated 25.05.2016, there is no objection as such and the contention raised by the petitioner is vague by merely blaming the Department and therefore, the objection was over-ruled.

6. The impugned assessment orders, in these cases, are a classical example of how an Assessing Officer should not function in spite of repeated decisions of this Court, pointing out the role of the Assessing Officer and it appears that the first respondent has no inclination to follow the Rule of Law. The sanctity of the proposal by the Enforcement Wing Officials, which was earlier called as "D-3" proposal, is greatly in question. The proposal admittedly is an inter-departmental Communication. It appears that the Department follows a procedure that if the Assessing Officer wishes to defer with such "D-3" proposal, he is entitled to submit his objections, which will be once again placed before the Enforcement Wing Officials, who are entitled to either accept or reject the views taken by the Assessing Officer. In the event the Enforcement Wing Officials rejects the objection raised by the Assessing Officer, to the the "D-3" proposal, it appears that there is a direction to the Assessing Officer to complete the assessment as per the proposal. If such is the inter-departmental directions, then, the impugned assessment proceedings are a farce. It appears that the entire procedure followed by the Assessing Officer by issuing a notice, calling for objection and affording an opportunity of personal hearing, is to hoodwink the dealer apart from abdicate his statutory duty as an Assessing Officer. Thus a procedure 6which does not have a sanction of law, can hardly be a basis to complete an assessment. The role of Assessing Officer is an independent role and he being a Statutory Authority, has to complete the assessment in accordance with law. In the above referred decision of the Hon'ble Division Bench of this Court, while considering the effect of such "D-3" proposal, had condoned the arbitrary in the manner in which the Assessing Officer had functioned. At this stage, it will be worthwhile to refer to the operative portion of the said judgement of the Division Bench in Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Arisipalayam Circle (referred to supra):-

> "Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement, has directed the assessing officer to complete the assessment on the basis of the proposal in D-3 form, we find that the assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal. 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. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner."

The above decision of the Hon'ble Division Bench is fully applicable to the case on hand. In the instant case, the notice issued by the first respondent dated 10.05.2016 itself is defective and as observed earlier, it is an outcome of total non-application of mind as it is a verbatim repetition of the observations of the Enforcement Wing Officials. This is clear because while recording the statement from the petitioner, the view of the Inspecting Officers has also been recorded in the statement dated 25.01.2016. Thus, it is clear that the first respondent did not apply his mind even at the first instance, when he issued pre-revision notices, dated 10.05.2016.

7. For all the above reasons, the entire proceedings initiated by the first respondent, commencing from pre-revision notices dated 10.05.2016, culminating in passing of the impugned assessment orders, dated 08.06.2016, are wholly illegal and against the settled legal principles referred to supra.

8. Accordingly, these Writ Petitions are allowed and the impugned assessment orders, dated 08.06.2016 are set-aside and consequently, the pre-revision notices dated 10.05.2016 are

also set-aside. However, it is open to the first respondent, the Assessing Officer to pass orders of assessment afresh in accordance with law, after giving an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1.The Assistant Commissioner (CT),
Tirupur Central - II Assessment Circle,
No.42, Kumaran Road,
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4.The Joint Commissioner (CT),
Enforcement,
Commercial Taxes Building,
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1 cc to P.Rajkumar, Advocate, sr.38335
1 cc to Government Pleader, sr.38401

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vs co
kra 25.07.2016