IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.17373 to 17378 of 2013 & 40335 to 40337 of 2016 & and all connected pending MPs and WMPs

M/s.Kone Elevator India (P). Ltd.,
rep.by its Company Secretary
Sri C.V.S.Krishnakumar ... Petitioner in all the WPs

Vs

1. The State of Tamil Nadu, rep.by its Secretary, Commercial Taxes Department, Fort.St.George, Chennai-9.

2. The Assistant Commissioner (CT), Royapettah II Assessment Circle, Chennai. ... Respondents in Wps.17373 to 17376 of 2016

3. The Principal Secretary/Commissioner of Commercial Taxes, Chennai-5.

4. The Assistant Commissioner (CT), Royapettah Assessment Circle, Chennai-28.

5. The Assistant Commissioner (CT), Central Enforcement Wing-11, Chennai-6. ... Respondents in WPs.40335 to 40335 of 2016

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari

(i) to call for the records of the 2nd respondent respectively in CST/ 791462/2006-07, CST/791462/2007-08, CST/791462/2008-09, CST/ 791462/2009-10, CST/791462/2010-11 and CST/791462/2011-12 and quash the proceedings dated 30.3.2013 issued therein (WP.Nos.17373 to 17378 of 2013) and

(ii) to call for the records of the 2nd respondent respectively in CST/ 791462/2013-14, CST/791462/2014-15 and CST/791462/2015-16 and quash the proceedings dated 13.10.2016 (WP.Nos.40335 to 40337 of 2016).

For Petitioner : Mr.R.L.Ramani,
Senior Counsel for Mr.B.Raveendran

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader appears for the respondents. Heard both.

2. All these writ petitions have been filed by M/s.Kone Elevators India Private Limited and interestingly, the challenge in these writ petitions is to the show cause notices issued by the Assessing Officer under the provisions of the Central Sales Tax Act, 1956 in respect of the assessment years 2006-07 to 2011-12 and 2013-14 to 2015-16. The only issue is with regard to the proposal to disallow the exemption on stock transfer against Form F. That apart, the notices, which have been issued in the year 2016, are virtually identical to that of the impugned notices issued in the year 2013 except for the fact that there are certain vague references made to the decisions rendered by the Hon’ble Supreme Court and this Court, without even mentioning as to which are those decisions the Assessing Officer has in mind.

3. The need for the petitioner to question the impugned notices is that the very same issued was considered by the Tamil Nadu Sales Tax Appellate Tribunal in T.A.No.196 of 2010 and the Tribunal remitted the matter back to the Assessing Officer to verify each and every transaction. The petitioner would further contend that the assessments for the years 2002-03 to 2005-06 are still pending with the Assessing Officer and that without complying with the directions issued by the Tribunal, the impugned notices could not have been issued.

4. Further, the learned Senior Counsel for the petitioner would place reliance on the clarification issued by the Special Commissioner and Commissioner of Commercial Taxes dated 21.8.2002 to M/s.Johnson Lifts Private Limited and would contend that this clarification is binding on the Assessing Officer. He has also referred to the decision of this Court in the case of Hindustan Petroleum Corporation Ltd. Vs. D.C.(C.T.), LTU, Chennai [reported in (2016) VIL 618].

5. The learned Additional Government Pleader appearing for the respondents submits that in both the set of cases, a counter affidavit has been filed by the respondents separately and by referring to the counters, it is submitted that the impugned proceedings being only notices containing the proposal, the respondents cannot be accused of attributing any preconceived notions and ideas on the petitioner's claim and that the petitioner has been invited to submit documentary evidence in relevance to the claim of exemption on stock transfer against Form F.

6. It is also submitted by the learned Additional Government Pleader that the petitioner, instead of submitting relevant records before the Assessing Officer, filed these writ petitions before this Court at the notice stage itself and obtained an interim order in the writ petitions of the year 2013 and prevented the Assessing Officer from proceeding further in the matter. It is also submitted that the Assessing Officer acted on his own and issued notices and not acted upon exclusively on the findings of the officials of the Enforcement Wing as contended by the petitioner. Thus, the respondents raised an objection for entertaining these writ petitions as against the show cause notices and submitted that they are approaching the issue with open mind and not being guided by the report of the officials of the Enforcement Wing.

7. At this juncture, this Court wishes to point out that the writ petitions, which have been filed challenging the notices issued in the year 2013, were entertained and an interim order was granted. However, a counter has been filed by the respondents only on 02.12.2016 i.e. today. There is no explanation on the part of the respondents for the gross delay in the counter filed in the writ petitions of the year 2013, especially when interim orders were operating against the Department for the past three years. However, a counter affidavit has been filed promptly in the writ petitions of the year 2016, within two weeks.

8. Be that as it may, this Court has to decide as to whether the impugned show cause notices require interference.

9. Admittedly, the petitioner has not challenged the impugned show cause notices on the ground of lack of jurisdiction, but would challenge the same in the light of the decision rendered by the Tamil Nadu Sales Tax Appellate Tribunal, certain orders passed remanding the earlier assessments for a fresh consideration and the circular issued by the Commissioner of Commercial Taxes. In my considered view, these are not grounds, on which, the show cause notices can be quashed. The show cause notices, being a proposal, the

appropriate course to be adopted by the petitioner is to respond to the show cause notices. Without doing so, the petitioner cannot interdict the proceedings. Therefore, this is sufficient to hold that the writ petitions are not maintainable and to reject the prayer sought for by the petitioner to quash the impugned notices.

10. Thus, the consequential direction that should be issued is to direct the petitioner to subject themselves to the adjudication proceedings by submitting their reply. However, this Court wishes to point out to the concerned Assessing Officers as to how they should examine a Form F declaration, if filed by the petitioner. This is with a view that the Assessing Officer does a thorough exercise in the matter. This aspect was considered by this Court in the case of Hindustan Petroleum Corporation wherein the following observations were made :

> "6. The type of enquiry to be conducted when Form F Declaration is filed by the dealer was explained by the Hon'ble Supreme Court in the case of Ashok Leyland Ltd. Vs. State of Tamil Nadu & Another [2004 (Vol.134) STC 473] - 2004-VIL-02-SC. In the said decision, the Hon'ble Supreme Court referred to the decision of the Kerala High Court in the case of C.P.K. Trading Company Vs. Additional Sales Tax Officer, III Circle, Mattancherry [(1990) 76 STC 211 (Ker.)], in which, the Kerala High Court held that the Assessing Authority can conduct an enquiry to find out whether the particulars in the declaration furnished are correct, or dependable, or in accord with the facts and accurate or genuine. That alone is the scope of the enquiry contemplated by Section 6A(2) of the Act. On the conclusion of such an enquiry, he should record a definite finding, one way or the other.
>
> 7. It was further held that the nature of enquiry, that can be conducted by the Assessing Authority under Section 6A(2) of the Act, is certainly for him to decide. It is his duty to verify and satisfy himself that the particulars contained in the declaration furnished by the dealer are 'true'. As a quasi judicial authority, the Assessing Authority should act fairly and reasonably in the matter. During the course of the enquiry, under Section 6A(2) of the Act, it is open to the Assessing Officer to

require the dealer to produce relevant documents and other papers or materials, which are germane or relevant, to find whether the particulars contained in the declaration (F Forms) are 'true'. It is not possible to specify the documents or other materials or papers that may be required, to be furnished in all situations and in all cases. It depends upon the facts and circumstances of each case. The power vested in the officer is a wide discretionary power, to find, whether the particulars contained in the declaration (F forms) are 'true'. It is not possible or practicable to lay down the exact documents or materials that may be required in all the cases, by the Assessing Authority, to come to a proper and just finding as required by Section 6A (2) of the Act.

....

9. Further, the Hon'ble Division Bench of this Court in the case of A.Dhandapani Vs. State of Tamil Nadu & Another [(1995) 96 STC 98 (Mad.)], also considered an identical issue and held as follows :

'17. As a result of the aforesaid discussions, the following conclusions emerge :

(i) Rule 4(3A) of the CST (TN) Rules is directory and not mandatory. Contravention of the said rule does not warrant punishment. When Form F is filed by a dealer, he chooses or elects the mode of proving that the transfer of the goods is otherwise than by way of sale. Therefore, he has to prove that the particulars contained in Form F are true. In the event he fails to prove that the particulars mentioned in Form F are true and no other material evidence is placed before the Authority to support the stand of the dealer that the transfer of goods is otherwise than by way of sale, the decision or inevitable result would be that the transfer of goods is by way of sale in the course of inter-State trade or commerce, as such, it is exigible to sales tax under the CST Act.

(ii) The enquiry required to be made under Section 6A(2) of the CST Act is

> confined to find out the truth or otherwise of the particulars contained in Form F and for this purpose, other evidence, if any produced by the dealer other than the particulars contained in Form F is also to be considered. In the course of such enquiry, it is open to the Authority to call for any other information in order to verify the truth or otherwise of the particulars contained in the declaration filed in Form F. The 'any other information' may be that which Rule 4(3A) of the CST (TN) Rules require a dealer to maintain, except the one required under Rule 4(3A)(d) or any other evidence relating to the issue, in order to adjudicate whether the particulars mentioned in Form F are true. The copies of the bills issued by the agents to the purchasers as required by Rule 4(3A)(d) need not be produced, nor it is open to the Assessing Authority to call for such bills.'
>
> The above decision would also go to establish that in the absence of any enquiry done by the Assessing Officer, the respondent cannot take a stand that the transaction was not one of stock transfer."

11. The above legal principle should be borne in mind by the Assessing Officer as and when Form F declarations are submitted by the petitioner for the impugned show cause notices.

12. It is submitted by the learned Senior Counsel appearing for the petitioner that in respect of the assessment year 2010-11, the provisional assessment was made, which was challenged by the petitioner in W.P.No. 24270 of 2011.

13. Though the said writ petition was disposed of by order dated 4.11.2011, remanding the matter back to the Assessing Officer, till date, the assessment has not been finalized. It is not known as to why the Assessing Officer concerned has put the assessment for 2010-11 in cold storage.

14. In the light of the above discussions, the prayer sought for by the petitioner to quash the show cause notices stands rejected and there will be a direction to the petitioner to submit their objections to the impugned notices and produce all Form F declarations within a period of eight weeks from the date of receipt of a copy of this order. On production of the same, the Assessing Officer concerned shall conduct an enquiry in terms of the observations as required to be done and pointed out

by the Hon'ble Division Bench of this Court in A.Dhandapani's case and pass a reasoned order on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner.

15. Taking note of the fact that the assessment for the year 2010-11 is yet to be completed, in spite of a direction issued by this Court and the writ petitions of the year 2013 have been pending without filing any counter till this date, this Court is of the view that the Joint Commissioner (CT) (East), Greams Road, Chennai shall monitor the manner, in which, the Assessing Officer concerned shall proceed with the directions issued by this Court to ensure that the proceedings are completed expeditiously and in an independent manner.

16. The writ petitions are dismissed with the above observations. No costs. Consequently, all connected pending MPs and WMPs are also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS
To

1.The Secretary to Government of Tamil Nadu,
Commercial Taxes Department,
Fort.St.George, Chennai-9.

2.The Assistant Commissioner (CT),
Royapettah II Assessment Circle, Chennai.

3.The Principal Secretary/Commissioner
of Commercial Taxes, Chennai-5.

4.The Assistant Commissioner (CT),
Royapettah Assessment Circle, Chennai-28.

5.The Assistant Commissioner (CT),
Central Enforcement Wing-11, Chennai-6.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.71887
+1cc to the Special Government Pleader(T), S.R.No.71617

WP.Nos.17373 to 17378 of 2013
& 40335 to 40337 of 2016 & all
connected pending MPs & WMPs

UG(CO)
CA(28/12/2016)