BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.11911,11912 and 11913 of 2016
and
W.M.P.(MD).Nos.9116,9117 and 9118 of 2016

L.G.Shenbagarajan
rep.by its Propriator
Shenbagarajan .. Petitioner
in all petitions

Vs.

The Commercial Tax Officer,
Theni-II Assessment Circle,
Theni. .. Respondent
in all petitions

PRAYER in W.P.(MD).No.11911 of 2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33415120787/2008-09 and quash the order dated 25.05.2016 as it is unlawful and in violation of the principles of natural justice and further direct the respondent to consider the objection letter dated 22.01.2016 along with records filed by the petitioner in all perspective on its merits, in terms of the decision of this Hon'ble Court reported in 9 VST 478 & WP(MD) No.20023/2014.

PRAYER in W.P.(MD).No.11912 of 2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records of the respondent in CST No.150249/2008-09 and quash the order dated 10.06.2016 as it is passed against law and in violation of the principles of natural justice.

PRAYER in W.P.(MD).No.11913 of 2016:Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33415120787/2009-10 and quash the order dated 20.06.2016 as it is passed without any show cause notice for adjudication with regard to the levy of tax & penalty on the receipt of commission which is unlawful and in violation of the principles of natural justice.

For Petitioner :Mr.R.D.Ganesan

For Respondents :Mr.R.Karthikeyan
Additional Government Pleader

C O M M O N O R D E R

The petitioner L.G.Shenbagarajan, aggrieved by the Assessment Order made by the Commercial Tax Officer, Theni-II, has brought three writ petitions.

2. In W.P.(MD).No.11911 of 2016 challenge is to the proceedings issued by the Commercial Tax Officer, Theni-II in TIN No.33415120787/2008-09, dated 25.05.2016, in and by which, the said Authority by over-ruling the objections given by the petitioner relating to the taxable turnover of the year 2008-2009, under TNVAT Act, reversed the ITC and thereafter, called upon the petitioner to pay a sum of Rs.4,06,782/- with the penalty of Rs.9869/- under Section 27(3) and one another penalty of Rs.96,227/- under Section 27(4) of the TNVAT Act.

3. It is the case of the petitioner, a Dealer in cotton seeds, during the process of ginning the Cotton Kappas, the petitioner suffered an invisible loss, which is not liable to be reversed as per Section 19(9)(iii) of the TNVAT Act. As per Section 19(9)(iii) of the Act, no input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods, if such inputs damaged in transit or destroyed at some intermediary stage of manufacture. On that basis, when a notice was issued on 11.12.2015 by the Assistant Commercial Tax Officer, Assistant Circle, Theni-II, calling upon the petitioner on the reversal of ITC, he sent a detailed reply on 22.01.2016, making it clear that reversal of ITC on the entire purchase of cotton under Section 19(9)(iii)is not valid. With regard to the issue about levying of purchase tax under Section 12 of the Act, the petitioner replied that according to Entry 41 of part B of I-schedule to TANVAT Act, declared goods as specified in Section 14 of CST Act, is taxable at the rate of 4% on the point of sale of cotton, namely, all kinds of cotton (indigenous or imported) in its un-manufactured state whether ginned or un-ginned baled pressed or otherwise but not including cotton waste. In other words, it has been classified as same commodity under item(ii) of Section 14 of CST Act. When the aforesaid reply has been given for all the issues raised in the pre-assessment notice, dated 11.12.2015, learned counsel for the petitioner drawing the notice of this court to the last page of the impugned order, contended that not even one line of reason has been mentioned for the reply given by the petitioner to the pre-assessment notice. The Commercial Tax Officer, Theni-II, has stated formally that the

petitioner was given a personal hearing in the office at 28.01.2016. Further, the order does not reflect application of mind by the authority to reach the conclusion for reversal of the ITC and also for levying penalty under Sections 27(3) and 27(4) of the TANVAT Act. Hence, it is prayed that the impugned order may have to be set aside.

4. Heard both sides and perused the records.

5. Mr.R.Karthikeyan, learned Additional Government Pleader, who takes notice for the respondents, although supported and admitted that the impugned order, in regard to the conclusion reached by the Commercial Tax Officer, Theni-II, in the impugned final assessment order, is not able to show any line of reason as to how the petitioner deserved the reversal of ITC and also how the petitioner has committed any error in respect of levy of purchase tax under Section 12 of the Act. Therefore this Court, by considering the fact that there is no logical finding on the part of the Authority to conclude against the petitioner de hors the objections raised by him, is inclined to set aside the impugned pre-assessment order.

6. It is well-settled law that the Commercial Tax Officer while discharging his quasi judicial power is required to exercise the said power only through a reasoned speaking order. In the present case, not even a single one sound reason has been shown for reversal of ITC. Accordingly, the impugned order is set aside and the matter is remitted back to the file of the Commercial Tax Officer, Theni-II Assessment Circle.

7. Coming to W.P.(MD).No.11912 of 2016, by virtue of the impugned proceedings in CST No.150249/2008-09, dated 10.06.2016, issued by the Commercial Tax Officer, Theni-II, the objections filed by the petitioner were held as an after-thought and the taxable turnover escaped assessment was fixed as Rs.44,82,380/- at 4% besides levying a penalty for a sum of Rs.2,68,944/- was levied.

8. In this case, as rightly pointed out, when the objections given by the petitioner to the pre-assessment notice dated 11.12.2015 that the respondent ought to have issued notice of assessment under Central Sales Tax Act, 1956, separately, since it is a different enactment, nowhere, the Commercial Tax Officer has answered the same. Therefore, for want of reasons, the impugned order is also liable to be set aside. Accordingly the impugned order is set aside and the matter is remitted back to the file of Commercial Tax Officer, Theni-II Assessment Circle.

9. Coming to W.P.(MD).No.11913 of 2016, Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents objecting to the prayer of the petitioner for quashing

the entire impugned proceedings therein, submitted that although the petitioner has challenged the sale suppression, when he was called upon to submit a detailed reply and objection with regard to the reversal of waste sale and purchase tax, no challenge has been made to the same. Therefore, the petitioner may be instructed to file an appeal with regard to the reversal of ITC and purchase under Section 12 of the Act, waste sale and penalty for the reason that the respondent has dealt with the case of the petitioner on the aforesaid issues crucially and clearly, which do not call for any interference.

10.This Court finds it difficult to accept the said proposal for the reason that the impugned was passed without a final conclusion by the Commercial Tax Officer, Theni-II Assessment Circle. The said Authority should have considered the petitioner's reply dated 22.01.2016 in all aspects. At any rate, being a quasi judicial authority, when pre-assessment notice was issued relating to the estimated turnover of Rs.8,70,258/-, the petitioner should have been given an opportunity to show cause for levying of taxes and penalty with regard to the turnover. The said course not having been adopted, this Court is of the view that the impugned order has to be interfered with.

11. Accordingly, the impugned order is set aside and the matter is remitted back to the file of the Commercial Tax Officer, Theni-II. Since the petitioner has given detailed objections, he shall be given a personal hearing and thereupon, it is open to the Commercial Tax Officer, Theni-II, to pass a well reasoned order on merits and in accordance with law, as expeditiously as possible.

12. With the above directions, these writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Theni-II Assessment Circle,
Theni.

+3cc to Mr.R.D.Ganesan, Advocate Sr.No.35956,35957,35958
+1cc to Special Government Pleader Sr.No.36127
pjl
sm:CK:21/10/2016:4P/6C