IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P. Nos.21940 to 21946 of 2017
and
W.M.P.Nos.22982 to 22988 of 2017

M/s.Steel Hypermart India Pvt Ltd
Rep.by its. Director,
No.28/2D,IE NH-7,Nallaganakothapalli,
Shoolagiri, Hosur-635 117. .. Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT)
Hosur (North), Hosur .. Respondent in all W.Ps

Prayer in all W.Ps:- Petitions filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the order of the respondent, dated 30.06.2017, in TIN No.33603323224/2008-09; 2009-10; 2010-11; 2011-12; 2012-13; 2013-14; 2014-15, respectively and to quash the same.

For Petitioner in all W.Ps : Mr.A.L.Somayaji, Senior Counsel, for, Mr.Adithya Reddy.

For Respondent in all W.Ps : Mr.K.Venkatesh, Government Advocate.

COMMON ORDER

Heard Mr.A.L.Somayaji, learned Senior Counsel, assisted by Mr.Adithya Reddy, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent, in all the writ petitions. With the consent of the learned counsel appearing on either side, the writ petitions are taken-up for final disposal at the admission stage itself.

2. The petitioner has filed these writ petitions, challenging the assessment orders passed by the respondent under the provisions of the Central Sales Tax Act, 1956, for the

assessment years 2008-09 to 2014-15. This is the second time, the petitioner is before this Court pertaining to the same assessment years.

3. Earlier, the writ petitioner filed in W.P.Nos.29955 to 29962 and 29968 of 2015 and in the said writ petitions, the petitioner had challenged assessment orders, dated 19.08.2015.

4. The matter was hotly contested by either side and the Court, by order, dated 12.09.2016, allowed the writ petitions, issuing specific directions as to how the respondent should re-do the assessments. The relevant portions of the order, dated 12.09.2016, passed by the Court, are quoted herein below:-

> "7. Along with the objections dated 26.06.2015, the petitioner also enclosed the sales/purchases summary; profit and loss account for the relevant period; copy of stock statement and copy of job work statements. Pursuant to the objections submitted by the petitioner, notices were issued to the petitioner calling upon him to appear for the personal hearing which opportunity was availed by the petitioner and during the course of the same, the petitioner has produced the documents such as sale register; purchase register; account confirmation copy of M/s.Steel Shoppe, Hosur; account confirmation copy of M/s.Steel Hypermarket India Pvt. Ltd., Hosur and Material inward & outward register. Thus, in the light of the stand taken by the petitioner before the respondent in their objections and the documents which were placed along with the petitions and at the time of personal hearing, the exercise which was required to be done by the assessing officer is to conduct an enquiry.
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> .....
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> 9. However, the respondent while completing the assessment, in my considered view, in an arbitrary and cryptic manner pointed out that the petitioner has not established the movement of goods by producing documents. In fact, the other issues are also correlatable to the said issue and therefore, if the finding rendered by the authority on the first issue is not correct then, automatically, it will have a cascading effect on the other issues as well.
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> 10.It is not a case where the petitioner is not able to furnish details. But, the petitioner has furnished the details which have been brushed aside by the respondent while completing the assessment. ....."
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> 11 ..... the respondent has stated that the records produced by the petitioner are insufficient to establish the genuineness of the transactions. If that is the stand taken by the respondent, then, there was

a duty cast upon the respondent to discuss about the nature of the documents produced by the petitioner and how he proposes to disbelieve those documents as to whether all the documents are liable to be rejected, etc.

12. ...... respondent appears to have not conducted a thorough enquiry in to the matter, as it appears that the documents are voluminous and in a summary manner, the assessment was done for the 7 assessment years.

13. .... Therefore, even after the issuance of show cause notice, while submitting their reply they sought for details such as Bill number etc.

14. ..... Since, the respondent has already initiated action, he is bound to conduct a thorough and complete enquiry into the matter and any slipshot or cursory perusal of the documents cannot be appreciated since, the proceedings are under a taxation statue.

15...... The petitioner shall be furnished the documents sought for and the petitioner is also entitled to produce the books of accounts, etc.

16. In the result, the writ petitions are allowed and the impugned orders are set aside and the matters are remanded back to the respondent for fresh consideration who shall afford an opportunity of personal hearing to the representative of the petitioner and the petitioner shall be permitted to furnish relevant documents, if any, and re-do the assessment in accordance with law."

5. On a perusal of the impugned assessment orders, they reveal that the respondent failed to appreciate the scope and purport of the directions issued by this Court, in the earlier writ petitions. To say the least, the impugned orders are cryptic and devoid of reasons. The Court, on an earlier occasion, found fault with the manner in which the respondent has completed the assessments. On a comparison with the earlier assessment orders, dated 19.08.2015, which were set-aside by this Court, with that of the impugned orders, it appears that the earlier orders had contained more reasons than the impugned orders.

6. Thus, it appears that the respondent was defiant to the directions issued by this Court. As per the directions issued in the earlier writ petitions, the respondent was bound to furnish the documents sought for by the petitioner. However, that direction has not been complied with. The petitioner, even at the first instance, while submitting their objections, dated 26.06.2015, to the revision notice dated 13.05.2015, has made a

specific request with regard to the documents, which were required by them. The respondent has failed to address this request, inspite of a specific direction issued by this Court, on an earlier occasion. The respondent has doubted the transactions done by the petitioner, suspecting it to be 'bill trading'. Therefore, the respondent has insisted upon the proof to show movement of goods.

7. After the disposal of the earlier writ petitions, the respondent issued notice dated 22.07.2017, calling for the originals of: (i) invoice purchase and sale; (ii) bank statements; (iii) trip sheets; (iv) movement of goods; and (v) insurance copy. It is not in dispute that the petitioner has produced the original invoice of purchase and sale and original bank statements. The impugned orders have been passed solely on the ground that the petitioner did not produce the originals of trip sheets and insurance copy. The stand taken by the petitioner in their representation dated 12.04.2017, is that, as per the trade practices, no trader is maintaining the trip sheets for local and short distance movements. Further, they have stated that the movement of goods locally was done by the vehicles owned by them and the photostat copies of the RC books, vehicle number duly certified by the Chartered Accountant were enclosed. With regard to the copy of the insurance, the petitioner pointed out that as per trade practices, no trader is insuring the goods when they are moved locally or for short distances and since the goods were moved in their own vehicles, they do not avail the insurance coverage, as it will add to the cost of the material. Further, the petitioner stated that even major companies like Essar Steel India Ltd., Tata Steel, SAIL and JSW Steel do not insist for the insurance. Therefore, the petitioner requested the respondent to verify all the records provided by them and also made a request to provide the details of Consignor and Consignee, which is a long pending demand of the petitioner and they expressed their readiness to furnish any other available documents sought for by the respondent.

8. The representations of the petitioner, dated 03.03.2017, 12.04.2017 and 26.04.2017 show that more than 34 files have been produced by the petitioner, which are original sale invoices and the bank statements. The respondent has not disputed the correctness or veracity of those documents, but blamed the petitioner for not filing a detailed reply.

9. In the preceding paragraphs, the directions and the operative portion of the earlier writ petitions have been extracted to illustrate as to in what manner, the respondent should have completed the assessments, on being remanded to him by this Court. The respondent has brushed-aside the directions issued and completed the assessments, thereby not only passing

the illegal orders, but, violating the orders passed by this Court. In fact, this Court would be justified in taking a very serious view in the matter. Nevertheless, since the correct rate of tax has to be levied and collected, this Court does not propose to dwell on the same subject any further.

10. As pointed out, the respondent has raised a doubt with regard to the genuineness of the transactions and that is why, the respondent is insisting upon the proof of movement of goods. When the petitioner has taken a stand that they do not maintain any log book / trip sheets for local movement and they use their own vehicles for movement of goods and as per the trade practices, they do not avail insurance coverage, the respondent should have directed the petitioner to produce oral evidence or affidavits substantiate their plea, in the absence of documentary evidence. If this had been done, the truth would have been established and the respondent would have been in a position to pass a reasoned order. However, the respondent, in a hurried manner, has completed the assessments, by passing such cryptic orders. Thus, for the above reasons, the impugned orders are liable to be set-aside.

11. In the result, the writ petitions are allowed, impugned orders are set-aside and the matters are remanded back to the respondent with a direction to furnish the documents sought for by the petitioner and it shall be done within a period of fifteen days from the date of receipt of a copy of this order and from the date on which the documents are received, the petitioner is granted fifteen days' time to submit the additional objections. On such objections being received, the respondent shall fix a date for personal hearing and on that date, the petitioner shall produce adequate oral evidence to establish their stand that the goods were moved locally in their own vehicles and as per the trade practices, trip sheets are not maintained and insurance cover is not availed and on completion of the personal hearing, the respondent shall re-do the assessments in accordance with law. No costs, consequently connected Miscellaneous petitions are closed.

Sd/--
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kv

To

The Assistant Commissioner (CT)
Hosur (North)
Hosur.

+1cc to Mr.Adithiya Reddy, Advocate SR.No.59584
+1cc to Special Government Pleader SR.No.59658

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SKS(CO)
GN(13/09/2017)