In the High Court of Judicature at Madras

Dated : 10.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.28702 to 28707 of 2017 &
W.M.P.Nos.30883 to 30888 of 2017

Tvl. Ambika Stores, rep by its
Proprietor V.Manohar Singh ....Petitioner in all the petitions

Vs

1.The Assistant Commissioner (ST) (FAC),
Gugai Assessment Circle, C.T.Building,
Pichards Road, Hasthampatti, Salem-7

2.The Deputy Commissioner (ST),
C.T.Building, Pitchards Road,
Hasthampatti, Salem-7

3.The Joint Commissioner (ST),
C.T.Building, Pitchards Road,
Hasthampatti, Salem-7

4.The Principal Secretary/Commissioner of
Commercial Taxes, Ezhilagam, Chepauk,
Chennai-5. ...Respondents in all the petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari (i) to call for the records on the file of the first respondent in TIN 33732722577/2010-11, TIN 33732722577/2011-12, TIN 33732722577/2013-14, TIN 33732722577/2014-15, TIN 33732722577/2012-13, all dated 26.10.2017 and quash the same as being without jurisdiction, authority and contrary to the principles of natural justice WP. Nos.28702 to 28706 of 2017); and (ii) to call for the records on the file of the fourth respondent in Ref.No.Q3/3259/2010 dated 14.6.2010 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice (WP.No.28707 of 2017).

For Petitioner : Mr.R.Senniappan
For Respondents: Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. As there are glaring and palpable errors in the impugned assessment orders, the proceedings cannot be allowed to stand any further and therefore, the writ petitions are disposed of by this common order at the admission stage itself.

2. The petitioner, which is a registered dealer on the file of the first respondent, has challenged the assessment orders passed by the first respondent for the years 2010-11 to 2014-15 and the circular dated 14.6.2010 issue by the fourth respondent.

3. The business premises of the petitioner was inspected by the officials of the Enforcement Wing on 05.3.2015 and a report appears to have been forwarded to the Assessing Officer pointing out two defects. This was the basis for the revision notices dated 25.5.2015. The two defects pointed out are as follows :

(i) On verification of the Departmental web report 'cross verification of seller and buyer as per Annexure-I', it revealed that without effecting any purchases, the petitioner claimed input tax credit. Therefore, the first respondent proposed to reverse the input tax credit availed by the petitioner; and

(ii) The petitioner has not accounted for the purchases reflected in the Departmental web report on 'purchase details from other dealers Annexure-II'.

However, in the notices, the first respondent did not enclose the material, which he had culled out from the Departmental website, but merely mentioned that there are discrepancies.

4. With regard to the re-assessment proceedings based on the details culled out from the official website of the Department, there are several cases where the Assessing Officers issued revision notices without affording the dealers a reasonable opportunity to submit their objections, as, invariably, the notices were bereft of particulars similar to the cases on hand. That apart, the Department did not give any guidelines to the Assessing Officer as to how to proceed further, when there is a discrepancy in the returns filed by the dealer and that of the returns filed by the other end dealer, as could be seen from the Departmental website.

5. A batch of cases came up before this Court for consideration and this Court, in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343], issued certain directions as to how re-assessment proceedings should be done based on verification from the Departmental website. It is not clear as to whether the first respondent was aware of the directives issued by this Court in the said decision, as no details have

been furnished to the dealer so as to enable them to submit an effective reply. This will be sufficient to hold that the revision notices dated 25.5.2015 themselves are defective.

6. Be that as it may, the petitioner submitted their objections enclosing the entire purchase details for the relevant years and requested the first respondent to examine the same. Similarly, they also enclosed all the purchase invoices and emphatically stated that there was no suppression. Thus, when the dealer produced such documents, the Assessing Officer is expected to go through the documents, give an opportunity of personal hearing to the dealer and if there is any shortfall, furnish the details for such a shortfall so as to enable the dealer to give further objections. Unfortunately, none of the procedure has been adopted by the first respondent.

7. The learned counsel for the petitioner would submit that the issue had arisen on account of a circular issued by the Principal Secretary/ Commissioner of Commercial Taxes bearing Ref.No.Q3/3259/2010 dated 14.6.2010. It is submitted that the said circular has entirely tied the hands of the Assessing Officer and he cannot independently decide the matter, as the said circular states that all the officers have to follow the instructions contained therein scrupulously.

8. As a Head of the Department of Commercial Taxes, the Principal Secretary/Commissioner of Commercial Taxes is entitled to issue circulars to regulate the manner, in which, the business of the Department should be carried on. However, if the circulars or instructions issued by the fourth respondent, in any manner, infringe the right of an Assessing Officer, who is an independent officer, to that extent, such instructions or circulars are held to be without jurisdiction. Time and again, the Hon'ble Supreme Court and this Court held that the Assessing Officer is an independent person and he has to decide the matter independently without being influenced by any directions from the superior authority. One of the earliest decisions on this point is in the case of Madras Granites Pvt. Ltd. Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642].

9. The Assessing Officer has to be apprised of and has to update himself with the legal position, which had been settled long back. Presumably, because of the hierarchy set up in the Department, the Assessing Officer has virtually abdicated his statutory duties and completed the assessments by passing the impugned orders. A mere reading of the impugned orders will clearly show that none of the documents produced by the petitioner has been considered by the first respondent.

10. One more important factor to be noted here is that the revision notices were issued on 25.5.2015 and the petitioner submitted their objections on 22.6.2015. It is not known as to what happened thereafter for nearly three years, as the matter went into cold storage and all of a sudden, the impugned orders have been passed on 26.10.2017. There is no explanation in the impugned orders as to why there was such a long delay in completing the assessments. Even assuming that there are some hurdles in completing the assessments, the Assessing Officer should have issued fresh notices to the dealer, heard the dealer in person and then completed the assessments. Having not done so, this Court has no hesitation to hold that there has been gross violation of the principles of natural justice. Thus, the impugned orders call for interference.

11. In the light of the above observations made by this Court, it may not be necessary for this Court to set aside the circular dated 14.6.2010. It would suffice to reiterate the legal principles, which have been laid down by this Court in several cases, one of which has been pointed out above.

12. For all the above reasons, W.P.Nos.28702 to 28706 of 2017 are allowed, the impugned orders are set aside and the matters are remitted back to the first respondent for a fresh consideration. The first respondent shall fix a date intimating the petitioner or their authorized representative to appear in the office of the first respondent, furnish full details as culled out from the Departmental website, grant time to the petitioner to file additional objections, fix a date for personal hearing, peruse all the documents and redo the assessments by passing a speaking order on merits and in accordance with law. W.P.No.28707 is accordingly disposed of. No costs. Consequently, all connected pending WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
1.The Assistant Commissioner (ST) (FAC), Gugai Assessment Circle, C.T.Building, Pichards Road, Hasthampatti, Salem-7

2.The Deputy Commissioner (ST), C.T.Building, Pitchards Road, Hasthampatti, Salem-7

3.The Joint Commissioner (ST), C.T.Building, Pitchards Road, Hasthampatti, Salem-7

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

+1cc to Mr.R.Senniappan Advocate, S.R.No. 79890
+1cc to the Special Government Pleader, S.R.No. 80033

GMR(CO)
TR(17/11/2017)