IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

CORAM

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

W.P.NOS.30098 TO 30104 AND 32479 OF 2016
+
W.M.P.NOS.26065 TO 26073 AND 28178 OF 2016

W.P.No.30098 of 2016 to 30104 of 2016 and 32479 of 2016 :-

M/s.Original Vel Sporting News,
No.8/38, Davidson Street,
Broadway, Chennai 600 001.
Rep by its Manager-
Mr.Dinesh Kumar Soman ... Petitioner (in all)

Vs.

1. The Joint Commissioner (CT),
Enforcement-I, Chennai 600 006.

2. The Deputy Commissioner (CT),
Enforcement (North),
1st Floor, PAPJM Building,
Greams Road, Chennai 600 006.

3. The Assistant Commissioner (CT),
Loansquare Assessment Circle,
Mezzanine Floor, Wavoo Annex Building,
48/39, Rajaji Salai, Chennai 600 001.

4. The Commercial Tax Officer,
Loansquare Assessment Circle,
Mezzanine Floor, Wavoo Annex Building,
48/39, Rajaji Salai, Chennai 600 001.

5. The Deputy Commercial Tax Officer,
Loansquare Assessment Circle,
Mezzanine Floor, Wavoo Annex Building,
48/39, Rajaji Salai, Chennai 600 001.

6. The Appellate Deputy Commissioner (CT),
Chennai North, PAPJM Annex Building,
Greams Road, Chennai 600 006. ... Respondents(in all)

Prayer :-

Writ Petition No.30098 of 2016 filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents pertaining to the Notice dated 10.03.2016, for the assessment year 2007-2008, issued by the respondents on the basis of the VAT audit of the business of the petitioner conducted on 08.09.2014 pursuant to the authorization -I. F.No.061/2014 dated 03.09.2014 issued by the first respondent and to quash the same as illegal and without authority of law and forbear the respondents, their men, agents and representatives from proceeding further against the petitioner on the basis of the said VAT audit of the business of the petitioner conducted on 08.09.2014.

Prayer in WP.Nos.30099 to 30104 of 2016 & 32479 of 2016:-

Wp.No.30099 of 2016:-

Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus Calling for the records of the respondents pertaining to the Notice dated 10.3.2016 for the Assessment Year 2008-2009 issued by the respondents on the basis of the VAT Audit of the business of the petitioner conducted on 8.9.2014 pursuant to the Authorization - I.F. No.061/ 2014 dated 3.9.2014 issued by the 1st respondent and quash the same as illegal and without authority of law and forbear the respondents their men agents and representatives from proceeding further against the petitioner on the basis of the said VAT Audit of the business of the petitioner conducted on 8.9.2014

Wp.No.30100 of 2016:-

Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus Calling for the records of the respondents pertaining to the Notice dated 24.11.2015 as supplemented by the Notice dated 29.2.2015 and Notice dated 10.6.2016 for the Assessment Year 2011-2012 issued by the respondents on the basis of the VAT Audit of the business of the petitioner conducted on 8.9.2014 pursuant to the Authorization - I.F. No.061/ 2014 dated 3.9.2014 issued by the 1st respondent and quash the same as illegal and without authority of law and forbear the respondents their men agents and representatives from proceeding further against the petitioner on the basis of the said VAT Audit of the business of the petitioner conducted on 8.9.2014

Wp.No.30101 of 2016:-

Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus Calling for the records of the respondents pertaining to the Notice dated 24.11.2015 as supplemented by the Notice dated 29.2.2015 and Notice dated 10.6.2016 for the Assessment Year 2012-2013 issued by the respondents on the basis of the VAT Audit of the business of the petitioner conducted on 8.9.2014 pursuant to the Authorization - I.F. No.061/ 2014 dated 3.9.2014 issued by the 1st respondent and quash the same as illegal and without authority of law and forbear the respondents their men agents and representatives from proceeding further against the petitioner on the basis of the said VAT Audit of the business of the petitioner conducted on 8.9.2014

Wp.No.30102 of 2016:-

Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus Calling for the records of the respondents pertaining to the Notice dated 24.11.2015 as supplemented by the Notice dated 29.2.2015 and Notice dated 10.6.2016 for the Assessment Year 2013-2014 issued by the respondents on the basis of the VAT Audit of the business of the petitioner conducted on 8.9.2014 pursuant to the Authorization - I.F. No.061/ 2014 dated 3.9.2014 issued by the 1st respondent and quash the same as illegal and without authority of law and forbear the respondents their men agents and representatives from proceeding further against the petitioner on the basis of the said VAT Audit of the business of the petitioner conducted on 8.9.2014

Wp.No.30103 of 2016:-

Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus Calling for the records of the respondents pertaining to the Order dated 16.3.2016 confirming the Notice dated 24.11.2015 for the Assessment Year 2009-2010 issued by the respondents on the basis of the VAT Audit of the business of the petitioner conducted on 8.9.2014 pursuant to the Authorization - I.F. No.061/ 2014 dated 3.9.2014 issued by the 1st respondent and quash the same as illegal and without authority of law and forbear the respondents their men agents and representatives from proceeding further against the petitioner on the basis of the said VAT Audit of the business of the petitioner conducted on 8.9.2014

Wp.No.30104 of 2016:-

Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus Calling for the records of the respondents pertaining to the Order dated 16.3.2016 confirming the Notice dated 24.11.2015 for the Assessment Year 2010-2011 issued by the respondents on the basis of the VAT Audit of the business of the petitioner conducted on 8.9.2014 pursuant to the Authorization - I.F. No.061/ 2014 dated 3.9.2014 issued by the 1st respondent and quash the same as illegal and without authority of law and forbear the respondents their men agents and representatives from proceeding further against the petitioner on the basis of the said VAT Audit of the business of the petitioner conducted on 8.9.2014

Wp.No.32479 of 2016:-

Writ petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus Calling for the records of the respondent pertaining to the Notice TIN No. 33250140895/ 2014-2015 dt. 13.06.2016 for the assessment year 2014-2015 issued by the 4th respondent on the basis of the VAT Audit of the business of the petitioner conducted on 08.09.2014 pursuant to the authorization - I.F.No. 061/2014 dated 03.09.2014 issued by the 1st responden t and quash the same as illegal and without authority of law and forbear the respondents their men agents and representative from proceeding further against the petitioner on the basis of the said VAT Audit of the business of the petitioner conducted on 08.09.2014

For Petitioner : Mr. Krishna Srinivasan
for M/s. S. Ramasubramaniam & Associates.

For Respondents: Mr. K. Venkatesh,
(in all wps) Government Advocate



C O M M O N O R D E R

Heard Mr.Krishna Srinivasan, the learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. Since the issue involved, relief sought for in these Writ Petitions are identical and the parties herein are one and the same, these Writ Petitions are taken up together for final disposal.

2. The petitioner, in all these Writ Petitions has

challenged various proceedings, which are notices, intimation and orders of the assessment on the ground that the proceedings are vitiated for lack of jurisdiction.

3. The legal issue, which arises for consideration in these Writ Petitions lie in a narrow compass, and therefore, it may not be necessary for this Court to elaborately refer to the factual aspects. However, to make things clear, the following facts are needed:-

i) Writ Petitions, bearing Nos.30098, 30099, 30100, 30101, 30102 and 32479 of 2016 have been filed challenging the notices issued under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act'), proposing to revise assessment for the relevant assessment years, pursuant to a VAT Audit, which was conducted in the business premises of the petitioner under Section 64 of TNVAT Act by the Enforcement Wing Officers of the respondent/Department.

ii) In Writ Petition Nos.30103 and 30104 of 2016, the challenge is to the orders dated 16.03.2016, which are assessment orders passed, based on the revision notices issued under Section 27 of TNVAT Act, to which, the petitioner did not file their objections. However, the common issue involved in all these cases is that the proceedings were initiated against the petitioner for the relevant assessment years, pursuant to the VAT Audit conducted in the business premises of the petitioner on 08.09.2014, under Section 64 of the TNVAT Act.

4. The petitioner has challenged the impugned proceedings by contending that, in terms of Section 64 (4) of the TNVAT Act, it is the Commissioner, who may order for Audit of the business of any registered dealer by an officer not below the rank of Deputy Commercial Tax Officer. However, in the instant case, authorization has been made by the Joint Commissioner, who has got no jurisdiction to do so. To buttress the said contention, the learned counsel appearing for the petitioner referred to the notice of VAT audit issued under Section 64 (4) of the Act, dated 23.06.2014, as well as the intimation given by the Commercial Tax Officer, Group V, Enforcement (North), Chennai 06, dated 10.06.2015, which clearly states that, VAT Audit is done, as per the authorization issued by the Joint Commissioner (CT), Enforcement-1, Chennai, in proceedings dated 03.09.2014.

5. Thus, it is the submission of the learned counsel appearing for the petitioner that the initiation of the proceedings itself, being without jurisdiction, the same goes to the root of the matter, vitiating the impugned notices and orders of assessment. In support of this contention, the

learned counsel referred to the decision of this Court, in the case of [ The Joint Commissioner (CT)] in W.P.No.31616 of 2015, dated 25.02.2016, wherein, the Government accepted the stand that the Joint Commissioner (CT) has no authority to authorize the Deputy Commercial Tax Officer to conduct VAT audit, and only the Commissioner has got jurisdiction to issue such authorization. Reference is also made to the decision of this Court, in the case of (Vs. The Joint Commissioner and two others) in W.P.Nos.32566 and 32641 to 32645 of 2016, dated 11.01.2017.

6. The learned Government Advocate appearing for the respondents would submit that, according to Section 64 (4) of the said Act, the Commissioner randomly selects the defaulting dealers and sends the list of dealers to the concerned Joint Commissioners of Enforcement for conducting VAT audit in the respect of their divisions, and though Section 64 prescribes that the Commissioner has to authorize for VAT audit, it is not possible for the Commissioner to issue authorization to each and every group officers, who are conducting VAT audit.

7. Further, it is the submission of the learned Government Advocate that the Commissioner of Commercial Tax is the Administrative Head of the Commercial Tax Department, and under him, there are ten Joint Commissioners in the Territorial Wing, and eight Joint Commissioners in Enforcement Wing. The said officials are at the District level to execute instructions/directions of the Commissioner. These officials, upon receiving guidelines/instructions from the Commissioner, instruct the subordinates under their control to implement the directions/guidelines of the Commissioner, and for such purpose, the Joint Commissioner of Enforcement Wing, on receipt of list of defaulting dealers from the Commissioner, issue instructions to their subordinates to conduct VAT audit in their respective divisions.

8. Therefore, it is submitted by the learned Government Advocate that the petitioner cannot expect the Commissioner to give authorization to each and every subordinate under his control. It is further contended that, to implement the orders of the Commissioner, the Joint Commissioner of Enforcement Wing directed the officials under their control for making viz., VAT Audit, as the case may be, and therefore, the contention raised by the petitioner is incorrect.

9. The learned Government Advocate also endeavoured to make submissions on the merits of the orders of assessment in two cases, viz., in W.P.Nos.30103 and 30104 of 2016, and the

basis for issuing the revision notices in other cases. However, this Court is not inclined to consider the submission on merits, since the petitioner's case is pitched on the jurisdiction of the officer, who had authorized to conduct VAT Audit. In the common counter affidavit filed by the respondents, there are clear and candid admissions by the respondents that the statute prescribes that the Commissioner alone can authorize the VAT Audit under Section 64 (4) of the TNVAT Act. Further, the statute also does not provide for delegation of such power to the Joint Commissioner. Though in the counter affidavit, there is a feeble attempt to state that the Joint Commissioners are empowered to carry out the directions of the Commissioner, there is nothing on record to show there was an authorization by the Commissioner, directing the Joint Commissioner to conduct VAT Audit in the business premises of the petitioner.

10. Thus, in the light of the admitted position in the counter affidavit that the statute prescribes the Commissioner to authorise VAT audit and taking note of the decision of this Court in the cases of i) M/s.Cabco Paradise Private Limited and ii) M/s. Jeevan Buy N.Save ( referred to supra), it has to be held that the proceedings, viz., revision notices and the orders of assessment impugned in all these Writ Petitions are without jurisdiction.

11. Accordingly, these Writ Petitions are allowed, the impugned notices and orders of assessment are set aside, including the VAT audit report. However, liberty is given to the respondent/Department to conduct a fresh Audit, if necessary, and pass fresh assessment orders in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)



//True Copy//

Sub Assistant Registrar



sd/gsk

To

1. The Joint Commissioner (CT),
   Enforcement-I, Chennai 600 006.

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   Enforcement (North),

1st Floor, PAPJM Building,
Greams Road, Chennai 600 006.

3. The Assistant Commissioner (CT),
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6. The Appellate Deputy Commissioner (CT),
Chennai North, PAPJM Annex Building,
Greams Road, Chennai 600 006.

+1cc to M/s. S. Ramasubramaniam & Associates., S.R.No.53052
+1cc to the Special Government Pleader, S.R.No.53154 & 53020

W.P.Nos.30098 to 30104
and 32479 of 2016

GJII(CO)
CS/25/10/17