IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29518 & 29519 of 2010
and
M.P.Nos.2 and 2 of 2010

M/s.Sukumar Welding Works,
Rep.by its Proprietor K.Saminathan,
92, Velliangiri Pudur,
Arachalur Post,
Erode District. .. Petitioner in both the WPs.

Vs.

1. The Special Committee
(U/s 16-D of TNGST Act)
Office of the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner (CT),
Erode (Rural),
Erode. .. Respondents in both the WPs.

W.P.No.29518 of 2010 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned proceeding of the 1st respondent in SCP.No.34/2010 M1/19655/2009 dated 06.12.2010 and quash the same as illegal and against the provisions of the Act and further direct the 1st respondent to conduct a de-novo adjudication strictly in accordance with the directions of this Court in W.P.No.20849/2009 dated 22.10.2009 insofar as it relates to TNGST 2004-05.

W.P.No.29519 of 2010 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned proceeding of the 1st respondent in SCP.No.34/2010 M1/19655/2009 dated 06.12.2010 and quash the same as illegal and against the provisions of the Act and further direct the 1st respondent to conduct a de-novo adjudication strictly in accordance with the directions of this Court in W.P.No.20850/2009 dated 22.10.2009 insofar as it relates to TNGST 2005-06.

For Petitioner .. Ms.R.Hemalatha

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

COMMON ORDER

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner in both these writ petitions has challenged the order passed by the Special Committee under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959 ("TNGST Act" in short). Since the petitioner approached the Special Committee seeking clarification in respect of assessments for the years 2004-2005 and 2005-2006 under the TNGST Act, two separate orders have been passed rejecting the applications, which has necessitated the petitioner to file the present writ petitions.

3.The petitioner filed returns for the relevant assessment years after which the assessing officer, viz., the second respondent called for the books and checked the accounts and noticed certain defects and omissions. The petitioner thereafter filed Form-XVII Declaration on a portion of the sales turnover and claimed certain payments. While so, on 19.10.2005, the place of business of the petitioner was inspected by the Enforcement Wing and eight defects were pointed out. Based on the same, revision notice was issued proposing to revise the petitioner's turnover for the relevant assessment years. In fact, even prior to initiation of such proceedings by the assessing officer, it appears that the assessing officer had sent a deviation proposal to the proposal received from the Enforcement Wing stating that there is no case for revision of assessments. However, it appears that such deviation proposal was rejected and the Joint Commissioner directed the second respondent to implement their report and to redo the assessment for both the assessment years. This ultimately led to passing of the assessment orders dated 27.04.2009 and 29.04.2009 for the two assessment years, 2004-2005 and 2005-2006 respectively. The petitioner immediately moved applications before the Special Committee under Section 16-D of the TNGST Act. The Special Committee, by order dated 17.09.2009, rejected the applications as the petitioner did not appear for several hearings. Challenging the same, the petitioner filed writ petitions before this Court in W.P.Nos.20849 and 20850 of 2009 and those writ petitions were allowed by a common order dated 22.10.2009 setting aside the order passed by the Special Committee dated 17.09.2009 and remanded the matter for fresh consideration. Once again the

Special Committee has rejected the petitions by way of passing the impugned order.

4.On a perusal of the impugned order, it is evidently clear that the reason for rejection is utterly perverse. The Special Committee has no jurisdiction to comment upon the observation made by the High Court in the earlier writ petitions and the expressions used in the impugned order are condemnable. The Special Committee did not appreciate the observations made by this Court as to what is the power conferred on it under Section 16-D of the TNGST Act. Without reading the order passed by the High Court, the Special Committee, in a most arbitrary and perverted manner, has passed the impugned order. The following two paragraphs, viz. Paragraphs-2 and 5, of the order passed in the earlier writ petitions in W.P.Nos.20849 and 20850 of 2009 dated 22.10.2009 will clearly reveal as to how this Court analysed the power of the Special Committee under Section 16-D of the TNGST Act:

> ''2.A perusal of Section 16-D of the Act shows that notwithstanding the provisions of the Act, either suo motu or on an application, the Special Committee call for and examine the records of the assessing authority in respect of any proceeding or order under sub-section (2) or (3) of Section 12 or sub-section (1) or (2) of Section 16. If such proceeding or order is passed in violation of the provisions of the Act or rules made thereunder or without following the principles of natural justice, the orders may be called for and scrutinised on merit, the Committee has the authority to pass such orders as it deems fit including directing assessing authority to make a fresh assessment.
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> ... ...
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> 5.Going by the very contention that there was a deviation proposal from the assessing authority, considering the fact that the petitioner had challenged the assessment as an arbitrary one, as a super regional sits as a corrective mechanism either suo motu or on an application to correct assessments that are in violation of the provisions of the Act. In the circumstances, whatever be the merits of the contentions of the petitioner, when the aggrieved assessee approaches the Committee, it is but necessary, the Committee bestows its attention to the issues raised by the petitioner, then pass an order considering the same giving reasons for either accepting or rejecting.''

5.Thus, none of the three members of the Special Committee had applied their mind to the observations contained in paragraph-2 of the order passed in the earlier writ petitions. Had it been done, then obviously the Committee could not have come to such a conclusion and made such irresponsible observations in the impugned order. All these are sufficient to quash the impugned proceedings. Under normal circumstances, when proceedings are quashed on such a ground, the matter would be remanded to the same authority for fresh consideration. However, in these cases, this Court does not propose to adopt such a procedure as in spite of an earlier direction, the Special Committee has failed to take into consideration of the merits of the matter. The petitioner in both the writ petitions has sought for quashing the order passed by the Special Committee and has not specifically challenged the orders of assessment dated 27.04.2009 and 29.04.2009. In any event, the orders of assessment would merge with the order passed by the Special Committee.

6.Therefore, this Court would be well within its jurisdiction to quash the assessment proceedings as well, with a direction to the assessing officer to redo the assessments with an open independent mind, uninfluenced by any report given by the Enforcement Wing or the direction given by the Joint Commissioner. This procedure alone would meet the ends of justice.

7.For the above reasons, the writ petitions are allowed and the order passed by the Special Committee impugned in these writ petitions are set aside. Consequently, the orders of assessment passed by the second respondent for the assessment years 2004-2005 and 2005-2006 under the TNGST Act dated 27.04.2009 and 29.04.2009 are set aside and the matter is remanded back to the second respondent for fresh consideration. The second respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment for both the assessment years by independently applying its mind to the materials placed before him without in any manner referring to the report of the Enforcement Officials or that of the concerned Joint Commissioner of Commercial Taxes. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/--
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Special Committee
   Office of the Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner (CT),
   Erode (Rural),
   Erode.

W.P.Nos.29518 and 29519
of 2010 and
M.P.Nos.2 and 2 of 2010

VD(CO)
GN(22/09/2017)