BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.16599 to 16603 of 2017
and
W.M.P.(MD)Nos.13208 to 13212 of 2017

Jeyaraj Automobile Agency,
Rep. By its Proprietor Mr.P.Jeyasuresh Jayaraj,
Thandapalayam Road, Periyakulam,
Theni District. : Petitioner in all Writ Petitions

Vs.

The Commercial Tax Officer,
Periyakulam Assessment Circle,
Periyakulam-625 501,
Theni District. : Respondent in all Writ Petitions

COMMON PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in TIN Nos.33245060207 / 2010-2011, 33245060207 / 2014-2015, 33245060207 / 2011-2012, 33245060207 / 2012-2013, 33245060207 / 2013-2014 dated 29.06.2017, 29.06.2017, 30.06.2017, 29.06.2017 and 29.06.2017 respectively and quash the same as it is unlawful and in violation of the principles of natural justice and further direct the respondent to re-do the assessment after granting an opportunity of being heard and adjudicate the matter independently without being influenced by the enforcement wing report.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader
(In all the writ petitions)

COMMON ORDER

By the consent of both sides, these writ petitions themselves are taken up for final disposal.

2.The writ petitions are directed against the impugned proceedings passed by the Commercial Tax Officer, Periyakulam, Theni District bearing TIN Nos.33245060207 / 2010-2011, 33245060207 / 2014-2015, 33245060207 / 2011-2012, 33245060207 / 2012-2013, 33245060207 / 2013-2014 dated 29.06.2017, 29.06.2017, 30.06.2017, 29.06.2017 and 29.06.2017 respectively.

3.The learned counsel appearing for the petitioner would submit that the petitioner is registered dealer in Automobiles on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as "the Act"] and has filed the monthly returns, remitting the admitted tax along with the returns. However, there was an inspection at the premises of the petitioner by the enforcement wing officials during the month of February 2014. The petitioner has been maintaining the necessary records as required under the Act. The respondent issued a notice for revision of assessment for the years 2010-2011 to 2014-2015, 2014-2015, 2011-2012, 2012-2013 and 2013-2014 respectively dated 14.08.2015, 26.08.2015, 26.08.2015, 26.08.2015 and 26.08.2015 respectively, purely based on the reports of the enforcement wing officials on the petitioner. On receipt of the impugned notices, the petitioner submitted detailed objections on 06.10.2015, 12.10.2015 and 30.10.2015, 30.10.2015, 12.10.2015 and 06.10.2015 along with the copy of the purchase invoices towards the purchase of H.O.T Crane and there were no purchase omission at all and the purchases of Cranes were entered and also available in the books of accounts maintained.

4.The learned counsel appearing for the petitioner would submit that his objections would clearly show that there were no escapement of turnover or tax, to revise the assessment order as stated to have been passed earlier. The audit or other query cannot be acceptable to reopen the original assessment. With this reasoning, the petitioner had requested one month time to reconcile the turn over of the purchases/sales as they had to see the old records and revert back to them. In the said objection/reply, the petitioner also made a further request to respondent that if they required further details in this regard, they shall inform the petitioner to furnish the same. Finally there were no personal hearing before passing final orders under Section 27 of the Act.

5.The learned counsel for the petitioner further submitted that there was a specific request made by the petitioner. The petitioner has made it clear that there were not escapement in any turn over and also made a specific request to grant one month time before passing order by granting personal hearing. Inspite of a request granting them personal hearing before passing orders under Section 27 of the Act and over looking repeated re-statement of law by this Court in the case of *Madras Granite (P) Limited Vs Commercial Tax Officer, Arisipalayam Circle, Salem and Another* reported in *146 (1) STC 642*, holding that assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities, the impugned order is wrongly passed which is liable to be quashed.

6.Reliance was also placed on one another judgment of this Court in the case of *L.G.Shenbagarajan, Rep. by its Proprietor Vs. the Commercial Tax Officer, Theni-II Assessment Circle, Theni* passed in the *W.P.(MD)Nos.11911 to 11913 of 2016 in 12.07.2016* which reads as follows:

> *"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.In the light of the above, it is pleaded, the respondent being a quasi judicial authority ought to have given reasonable time before proceeding on the basis of the inspection report based on which the original notice was issued. Therefore, the impugned orders being violative of the Principles of Natural Justice.

8.The learned Additional Government Pleader appearing for the respondents, after referring to the written requests made by the petitioner in their objections, requesting the respondent to provide them one month time to reconcile turn over purchases/sales as they have to verify the old records and revert back submitted that only disagreeing with the preliminary objections submitted, the orders under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 have been passed.

9.Although he attempted to sustain the impugned order on the ground that the petitioner has to be present before passing the impugned order, there is no notice issued that the respondents would be deciding the matter on a particular date. Secondly, while the respondent had issued the pre-assessment notices on the basis of the inspection report of the enforcement wing, no prejudice would have been caused had the respondents offered an opportunity of personal hearing to the petitioner to come and explains their case before passing final orders under Section 27 of the Act. The problem had occurred in the present case only for a simple reason that the respondent failed to hear the petitioner. In similar circumstances, the Division Bench of this Court in *Madras Granite (P) Limited Vs Commercial Tax Officer, Arisipalayam Circle, Salem and Another* reported in *146 (1) STC 642* while dealing with the same issue has held as follows:

> *"4.No doubt, the assessing officer issued pre-assessment notice including the notice for levy of penalty calling for objections from the dealer and after*

receiving reply from the dealer, completed the assessment on the basis of D-3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D-3 proposal, the Deputy Commissioner (CT), Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement has directed the assessing officer to complete the assessment on the basis of the proposal in D-3, form, we find that the assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal. It is well-settled that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessment. We hold that the assessment are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner. Both the writ petitions stand allowed. No costs. Connected W.M.Ps. Are closed."

10.In yet another similar circumstances, while dealing with identical circumstances, this Court has also held as follows:

"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."

11.Therefore, finding that the respondents miserably failed to follow the mandatory provisions under Section 27(1) and 27(2)of the Act, the impugned assessment orders are unsustainable in law. Hence, the impugned orders are set aside and the respondent is hereby directed to issue notice inviting the petitioner for personal hearing and after complying with the mandatory procedure, shall pass a speaking order by redoing the assessment proceedings.

12.With these observations, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Periyakulam Assessment Circle,
Periyakulam-625 501,
Theni District.

+One cc to The Special Government Pleader, SR.No.78804

+5 ccs to Mr.R.D.Ganesan, Advocate, SR.Nos.76204 to 76208

Mrn/MR
RL/8C/5P/SV/MMS/SAR1/3/11/2017

W.P.(MD)Nos.16599 to 16603 of 2017

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