In the High Court of Judicature at Madras

Dated : 13.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.9026 to 9029 of 2018
& WMP.Nos.10879 to 10882 of 2018

M/s.Sharoff Syndicate,
rep. by its Manager
No.17-B, Gandhiji Road,
Mayiladuthurai-609 001
...Petitioner in all WPS

Vs

The Assistant Commissioner (CT),
Mayiladuthurai-I Assessment Circle,
Mayiladuthurai. ...Respondent in all Wps

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent and quash the orders passed by the respondent respectively in TIN 33264042472/2011-12, 33264042472/2012-13, 33264042472/2013-14 and 33264042472/2014-15, all dated 26.2.2018 and direct the respondent to pass fresh orders as per the circular instructions of the Commissioner of Commercial Taxes, Chennain in Circular No.29/2015 in D3/22678/2015 dated 11.8.2015 without relying the proposals received from the Enforcement Wing by providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Bakthasiromoni
For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a dealer in consumer products of Godrej Company and is a super stockist of the goods in Nagapattinam and Thiruvarur Districts. The petitioner is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006.

3. Consequent to an inspection conducted by the officials of the Enforcement Wing in the business premises of the petitioner, the respondent issued notices dated 03.1.2017 for all the relevant assessment years namely 2011-12 to 2014-15, pursuant to which, a proposal was submitted by the Assistant Commissioner (CT) (Enforcement), Kumbakonam dated 07.10.2016. The respondent - Assessing Officer, by referring to the proposals of the officials of the Enforcement Wing, stated that the defects have been noticed during the course of inspection and he proposed to revise the assessment for all the years, which were completed based on self assessment basis and directed the petitioner to file their objections, if any. There was also a proposal to levy penalty under Section 27(3) of the said Act.

4. Subsequently, the petitioner also submitted their replies dated 13.1.2017, 24.1.2017 and 03.10.2017. In the said replies, the petitioner also referred to the circular issued by the Commissioner of Commercial Taxes in Circular No.29/2015 dated 11.8.2015 as regards the manner, in which, the discounts and incentives received post purchase have to be treated. The petitioner also referred to certain decisions of this Court to support their contention that there was no case of revision of the turnover and requested to drop the proceedings. However, the respondent completed the assessment and passed the impugned orders rejecting the plea raised by the petitioner.

5. The learned counsel for the petitioner submits that the respondent did not consider any of the objections raised by the petitioner and merely went by the defects pointed out by the officials of the Enforcement Wing and did not take note of the decisions of this Court nor the circular issued by the Commissioner of Commercial Taxes, which is binding on the Assessing Officer. Therefore, it is submitted that the impugned order may be set aside and that the matters be remanded for a fresh consideration after affording an opportunity of personal hearing, in which, the Assessing Officer may be directed to peruse all the records and the books of accounts of the petitioner.

6. Per contra, the learned Additional Government Pleader submits that the impugned orders being appealable orders, the petitioner has to prefer appeals and that the writ petitions need not be entertained. The learned Additional Government Pleader further submits that the admission made by the petitioner before the Inspecting Authorities is binding on the petitioner, that they cannot approbate and reprobate and that therefore, the objections were rejected. In support of his contention, he referred to the decision of the Hon'ble Division Bench of this Court in the case of Yousuff Radio Vs. Board of Revenue [reported in (1979) Vol.43 STC 525].

7. This Court has carefully considered the submissions made on either side and perused the materials placed on record.

8. On a reading of the impugned assessment orders, one gets an impression that they are very detailed orders. However, when one carefully reads the impugned orders, it would be clear that the respondent set out the allegations in the revision notices, verbatim extracted the replies given by the petitioner and rejected the objections virtually by a single line stating that the petitioner accepted the defects before the Inspecting Authorities.

9. The first aspect to be considered is as to whether the statement recorded by the officials of the Enforcement Wing can be put against the petitioner while the Assessing Officer is completing the assessment. It has to be borne in mind that the impugned proceedings are under the provisions of the said Act.

10. In the case of Yousuff Radio, the assessee admitted before the Income Tax Officer with regard to his income for two of the assessment years namely 1968-69 and 1969-70. A sworn statement given by the dealer before the Income Tax Authority was subsequently retracted by the assessee. This retraction was taken into consideration while the Appellate Assistant Commissioner was considering the appeal filed by the dealer in respect of the sales tax assessment for the said two years and granted benefit to the assessee. The Board of Revenue reversed the decision, which was confirmed by the Hon'ble Division Bench of this Court. It was pointed by the Hon'ble Division Bench of this Court that the courses of taxation under the Income Tax Act and the Sales Tax Act are entirely different, as, in the former, the income of the dealer is assessed to tax and is quantified by the Income Tax Officer in accordance with the provisions of that Act and the Tamil Nadu General Sales Tax Act, 1959 ordains the Assessing Authorities functioning thereunder to bring to tax sales as such either found in the books of accounts or agreed to be so by the assessee or otherwise proved to be so by circumstantial evidence. Thus, by analyzing the manner, in which, two Statutes operate, the Hon'ble Division Bench held in favour of the Revenue stating that the assessee admitted in his sworn statement that the two sums representing the sales for the two assessment years in question represented unbilled cash sales. Hence, the retraction made to the sworn statement was held to be lacking any bona fide.

11. In my considered view, the said decision in the case of Yousuff Radio, is not applicable to the present proceedings for more than one reason. Firstly, the alleged admission of liability is not voluntary and it is not by an affidavit filed by the dealer before the Assessing Officer, but, it is a statement recorded by the officials of the Enforcement Wing

during the course of inspection. The effect of such statement was considered by the Hon'ble Division Bench of this Court in the case of Madras Granites Private Limited Vs. CTO, Arisipalayam Assessment Circle, Salem [reported in (2006) 146 STC 642], in which, it has been held that it is settled that the Assessing Officer is a Quasi Judicial Officer and in exercising his quasi judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities namely the officials of the Enforcement Wing.

12. Since, in the instant case, the Assessing Officer acted on the basis of the directions of the higher authorities while completing the assessments, the impugned assessment orders are to be quashed. Eve in the instant case, the Assessing Officer stated that taking into account the results of inspection conducted, he confirmed the proposal. Thus, the decision in the case of Yousuff Radio is clearly distinguishable on facts and the decision in the case of Madras Granites Private Limited applies to the facts of this case with full force. These are sufficient grounds to set aside the impugned assessment orders.

13. Apart from that, the respondent ignored the circular issued by the Commissioner of Commercial Taxes dated 11.8.2015 in Circular No.29/2015. In the said circular, directions have been issued as to how to treat discounts and incentives received post purchase as sales turnover and the Assessing Officers were directed to verify a random sample of sale invoices and corresponding purchase invoices for certain period and if such random verification reveals that the dealer sold the goods lesser than the purchase value, a thorough scrutiny for the whole year shall be made.

14. The learned counsel for the petitioner submits that all the records available with the petitioner would clearly show that the sales effected by the petitioner were over and above the purchase price and the allegation against the petitioner is incorrect.

15. The Hon'ble Division Bench of this Court in the case of K. Arumuga Mudaliar Vs. Registrar, Tamil Nadu Taxation Special Tribunal [reported in (2003) 129 STC 141] held that clarifications and orders issued by the Commissioner in terms of the power vested in him under the Statute are binding on his subordinates especially where the orders or instructions are favourable to the assessee. The said circular, having been issued after coming into force the Tamil Nadu Value Added Tax Act, 2006, is binding on the Assessing Officer especially when it gives the manner, in which, the assessments are to be made. For all the above reasons, the impugned orders are held to be unsustainable.

16. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for a fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner, verify the books of accounts and the records that may be produced by the petitioner and redo the assessment in accordance with law without in any manner influenced by the report of the officials of the Enforcement Wing. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT), Mayiladuthurai-I Assessment Circle,
Mayiladuthurai.

+1cc to Mr.Mr.C.Bakthasiromoni, Advocate, S.R.No.28313
+1cc to the Government Pleader, S.R.No.28201

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WMP.Nos.10879 to 10882 of 2018

nrl(co)
nr 15/05/2018