

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE Tmt.JUSTICE V.BHAVANI SUBBAROYAN

W.A. No.173 of 2018
and
C.M.P. No.1083 of 2018

M/s.Delphi Automative Sytems P Ltd,
Rep by its Authorised Signatory,
Mr.Manoj Kochukunj Chacko,
No.14, Thiruneermalai Main Road,
Chromepet, Chennai - 600 044 .. Appellant/Petitioner

Vs.

The Assistant Commissioner (CT)
Pammal Assessment Circle
No.32 & 33, Sripuram 2nd Street
Chromepet, Chennai - 600 044 .. Respondent/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the order of the Writ Court dated 21.12.2017 made in
W.P. No.33485 of 2017.

Prayer in WP.No.33485/2017: Presented under Article 226 of the
Constitution of India to issue a writ of certiorarified
mandamus to call for the records of the respondent in TIN
33160887990/2015-16 quash the order dated 10.11.2017 and
further direct the respondent to follow the procedure under
section 27(1) of the Tamilnadu Value Added Tax Act 2006 by
conducting an enquiry by calling for the books of accounts and
connected records and thereafter determine the turnover which
had escaped assessment under the Act.

For Appellant : Mr.V.Sundareswaran

For Respondent : Mr.V.Haribabu, AGP (T)

JUDGMENT

(Delivered by S.MANIKUMAR, J.)

Challenge in this writ appeal is to the order of the writ
court dated 21.12.2017 made in W.P. No.33485 of 2017, by
which, the writ court, dismissed the writ petition as not
maintainable, with liberty to the appellant herein/writ
petitioner, to file an appeal as against the impugned order,

on or before 12.01.2018 and that if such appeal is filed within the said date, the appeal shall not be rejected on the ground of limitation.

2. The facts of the case of the appellant, are that M/s.Delphi Automotive Systems P Ltd., is a registered dealer on the files of the Commercial Taxes department since 2009 having its Registered Office at Mumbai. It is engaged in manufacture and supply of customized Automotive Systems, namely electronics and safety parts for various automobile customers. For manufacturing customized automotive components, purchases raw materials (i) locally from registered dealers, (ii) inter-State and (iii) import.

3. All the purchases so made are accounted for, in the regular books of accounts maintained by the appellant, in the course of its business. Movement of goods is accounted for by way of inward receipt from the point of entry to the point of factory for manufacture. After manufacture, the output that arises out of the use of raw materials purchased by way of intra-state, inter-state and import, are accounted for, in the books of accounts and sold to the respective customers, locally, as well as inter-state. Monthly returns are filed disclosing the sales and tax is paid based on the sale of the said goods.

4. It is further stated that returns have been filed since commencement of the business in 2009 and deemed to be accepted by virtue of Tamil Nadu Act 23 of 2012 w.e.f. 19.06.2012. The provision relating to filing of form WW was introduced by Tamil Nadu Act 18 of 2012, with effect from 30/08/2012, vide Section 63-A read with Rule 16A of the Tamil Nadu Value Added Tax Act, 2006, mandating filing of accounts, duly audited by a Chartered Accountant, if the total turnover of registered dealer exceeds Rs.1 Crore. The appellants filed Form WW, as mandated by Section 63A read with Rule 16A, disclosing the entire sales, the purchases made locally, as well as inter-state and import, which was omitted to be annexed, in the monthly returns filed by the appellant. According to the appellant, purchases of inter-state, as well as import, are not taxable under the Act and are exempted from taxation, under the TN VAT Act, 2006. The respondent upon perusing form WW, issued a notice, proposing to treat the omission to annex the details of inter-state purchases, in Annexure-9 and import, in Annexure-11 in form I, as sales suppression by making an addition of 15%, towards gross profit, on the reported inter-state and import purchases, ignoring the fact that the turnover had already been disclosed as sales (manufactured out of the raw materials which are purchased inter-state and import) and sales tax paid, was accepted by the respondent.

5. Apart from the above, it is the grievance of the appellant that the respondent also, proposed to reverse the

input tax credit, on the local purchases from the registered dealers, for the reason that, the turnover was not disclosed, and tax was not paid by them. Proposal was also made for imposition of penalty, without mentioning the provision. Objections were filed by the appellant through the Sales Tax consultant, and prima facie findings of the respondent were contested. Before the Assessing Officer, the appellant has also pleaded that when there was no tax evasion or omission to include taxable purchases, estimation made by him, is arbitrary, more so, when sales reported and tax paid, which was accepted in the order of assessment.

6. It is the case of the appellant that without adverting to the above, the respondent has rejected the objections and passed orders demanding huge tax, arbitrarily, by estimating the alleged sales suppression, ignoring the fact that sales turnover was already declared and tax paid, and contrary to the above, imposed penalty, under Section 27(4), which relates to the reversal of input tax credit.

7. Being aggrieved by the order of the respondent, W.P. No.33485 of 2017 has been filed on the ground of violation of principles of natural justice, unreasonableness, arbitrariness, abuse of process of law and ultravires of the provisions of the Act.

8. After hearing the arguments of both sides, Writ court, on 21.12.2017, passed the following order.

" 3. Learned counsel for the petitioner made elaborate submissions to justify the ground of challenge that the respondent is not empowered to invoke Section 27 of the TNVAT Act for making reassessment on the alleged escaped turnover without following the procedure under the said provision. Further, it is submitted that admittedly there is no tax payable on import or interstate purchases, there is no jurisdiction for the respondent to make estimation by adding 15% towards gross profit by presuming that they were sold by treating the alleged estimated sales suppression, more so when the same is reported and tax paid on the sales. Further, it is submitted that the respondent is not entitled to make an estimation of the alleged sales by adding 15% towards the alleged purchases by way of import when admittedly the same reported and sales tax paid. Learned counsel also drawn the attention of this Court for the observations made by the Assessing Officer and submitted that no enquiry was conducted, books of accounts were not called for and facts were not verified, etc.

4. For the purpose of adjudicating the correctness of the stand taken by the petitioner in this writ petition, necessarily the disputed

questions of fact have to be gone into. In the instant case, the petitioner has raised various factual issues and disputed the observations and findings recorded by the Assessing Officer. Therefore, without analyzing the factual matrix, it cannot be considered as to whether the respondent was justified in invoking Section 27 of the TNVAT Act. Therefore, necessarily the petitioner has to avail the appellate remedy available under the TNVAT Act which is not only efficacious but also effective. Merely because the statute mandates a pre-deposit is no ground to bypass the appellate remedy. It is further submitted that there is absolutely no basis for levying penalty under Section 274(3) of the TNVAT Act. This ground can also be canvassed before the appellate authority by raising all contentions.

5. Thus, for the above reasons, the writ petition is held to be not maintainable and accordingly, dismissed. The petitioner is at liberty to file an appeal as against the impugned order on or before 12.01.2018 and if such an appeal is filed within the said date, the appeal shall not be rejected on the ground of limitation. No costs. Consequently, connected Miscellaneous Petition is also closed."

9. Being aggrieved by the above decision, instant writ appeal has been filed on the grounds that the writ court has ignored the settled law that the inter-state and import purchases are not taxable under the Act, which is also not disputed by the respondent; that the writ court ought to have appreciated the fact that when the respondent had accepted the declaration of inter-state and import purchases, in Form WW, cannot ignore the sale of the customised manufactured goods, declared, in the very same form WW, filed by the appellant; that the writ court ought to have seen that the action of the respondent, in treating the purchases, as suppression and imposing tax, by adding gross profit, to the purchase turnover, amounts to double taxation; that the writ court ought to have held that the impugned order was per se, arbitrary, illegal, unreasonable, amounts to abuse of process of law, for the reason that when the respondent has not disputed the fact that the goods purchased by way of inter-state and import were used in the manufacture of customized goods, which were sold locally and declared in the returns and tax paid, the result is estopped from treating the inter-state and import purchases, as suppression; that the writ court has failed to consider that the respondent, as a quasi-judicial authority under the Act, has miserably failed to conduct an enquiry, as contemplated under the Act, before invoking Section 27 of the Act, for assessing the alleged escaped taxable turnover, in view of dictum laid down by the Hon'ble Apex Court, in State of Tripura vs Manoranjan Chakraborty and

others reported in 122 STC 594; that the writ court failed to consider that in view of the issue, relating to claim of input tax credit, already covered by a decision of this court, which binds the respondent, writ court ought not to have dismissed the writ petition, and that the writ court failed to see that the penalty under section 27(4) imposed is without jurisdiction, apart from being unwarranted and uncalled for, on the facts of the case.

10. Supporting the submissions made, during the course of hearing of this writ appeal, Mr.V.Sundareswaran, learned counsel for the appellant, brought to the notice of this court, a Circular, bearing No.7/2014 issued by the Office of the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5. Learned counsel for the appellant also relied on the judgment of a Hon'ble Division Bench of this court in SRC Projects Private Limited v. Commissioner of Commercial Taxes, Chennai and Another reported in (2010) 33 VST 333 (Mad). Arguing on the basis of the grounds extracted, Mr.V.Sundareswaran, learned counsel for the appellant submitted that, order of the writ court in W.P. No.33485 of 2017 dated 21.12.2017, requires reversal.

11. Mr.Haribabu, learned Additional Government Pleader for Taxes, submitted that, order impugned before the writ court, is valid. When the writ court has adverted to the grounds and passed a detailed order, the same does not require interference. He submitted that, when an alternative remedy is available, by way of an appeal against the assessment order, writ petition is not maintainable.

12. Heard the learned counsel for the parties and perused the entire materials available on record.

13. Circular No.7/2014 dated 03.02.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5, is extracted here under:

Circular No.7/2014 BB1/3589/2014	Office of the Principal Secretary/ Commissioner of Commercial Taxes, Chepuak, Chennai - 5.
-------------------------------------	--

Date: 03.02.2014

CIRCULAR

SUB: Writ Petition / Writ Appeal/Tax Case
(Revision) - Disposal of cases - Meeting with
Government Advocate - Certain guidelines and
circular instructions issued.

1. During the course of the meeting with the Law Officers of Madras High Court on 30.01.2014, it has been represented by them, that many Assessing Officers are passing orders without giving reasonable opportunity to dealers and

violating the Principles of natural justice, which has resulted in mounting numbers of Writ Petitions in the High Court leading to interim stay restraining the authorities proceeding further pursuant to the orders passed. After a considerable period, the Writ petitions were disposed of by setting aside the assessment proceedings with direction to the authorities to take necessary action in accordance with law.

2. It is also further represented that in some of the cases, objections raised by the dealers on the pre-assessment/revision notices are not properly examined/ discussed in the order and assessment orders simply state " that the objections filed by the dealers are overruled and proposals are confirmed". Such type of orders will not also stand in the test of law. Further, where there is a provision in the Act, requiring the dealer of being given a reasonable opportunity of being heard, which has also not been followed in many cases.

3. In the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Commissioner/ Deputy Commissioners should verify at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.

a) Passing of orders:

Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.

I) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.

II) Objections filed by the dealer on the pre assessment/revision notices shall be examined in each and every issue meticulously and Speaking order shall be passed addressing the objections raised. In short, the speaking order which is complete shall be passed.

III) As the provision in the TNVAT Act stipulates the conditions of granting or personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for

personal hearing or not.

b) Revision of Assessment

Under the TNVAT Act 2006, the assessing officers usually issue orders to reverse the ITC on obvious reasons. During the current financial year, the assessing officer may issue notice to reverse the ITC for each month separately under section 25 of the TNVAT Act 2006. after closure of the financial year, the assessment should be completed initially under Deemed Assessment under Sec.22 of the Act and then only they should take revision order, the dealer should be given reasonable opportunity and personal hearing if required so as per section 22(4) of the TNVAT Act 2006. No order of revision should be made without affording an opportunity to the dealer as provided under section 22,25,27 of the Act.

c) Filing of Tax case (R):

In regard to filing of Tax Case (Revision), the time limit to file Tax Case is 90 days from the date of receipt of the order STAT by the Addl.State Representative. A delay of 90 days in filing tax case beyond the first 90 days can be condoned by the High Court. In such cases, a delay condone petition should also be filed along with the Tax Case (Revision). If the delay in filing tax case is beyond 90 days (i.e) $90+90=180$ days), the Tax Case will not be admitted and it will be dismissed as barred by limitation. So, the Joint Commissioners are requested to file Tax Case Revision well within the period of permissible delay. Wherever necessary, all the Territorial Joint Commissioners including Chennai and Coimbatore divisions are instructed to file "Dummy" as per the standing instructions issued by the CC to avoid limitation.

d) Filing or WP/WA/TC:

A review petition on the order of writ petition/writ Appeal/Tax Case (Revision) may be filed before the High Court within a period of 30 days from the date of receipt of the order of High Court, if there is any fresh facts which have not been brought to the notice of the High Court while passing the order.

e) Filing of Writ Appeal

In regard to filing of Writ Appeal, the time limit prescribed is 30 days from the date or receipt of the order in the Writ petition. Hence, the officer should send a copy of the order immediately to the Joint Commissioner (Legal) will take up the issue to the SGP (Taxes), obtain legal opinion and send it to the officer for getting administrative sanction from the Commissioner through the Joint Commissioner (CT) of the respective Divisions. On getting order from the Commissioner, the officer should meet the SGP (Taxes) along with connected records to prepare Appeal

Memorandum and file the Writ Appeal. If there is any delay in filing Writ Appeal, the appeal may be filed along with a delay condone petition.

f) Collection of Cheques during the course of inspection/VAT Audit:

At present there is no provision in the Act/Rules for spot collection of Cheques from the dealers during inspection. Many Writ petitions are being filed challenging the collection of cheques during inspections. In the above cases, the High Court or Madras has also issued directions to the Enforcement authorities to return the cheques along with interest starting that there is no express provision in the TNVAT Act 2006. The law officer of High Court has expressed their opinion to handle this issue carefully and not to collect cheques under duress. In such cases, Assessing Officer shall collect taxes after making assessment as provision of the Act.

4. The receipt of this circular should be acknowledged by next post and you are requested to communicate this circular and obtain acknowledgement from the assessing officers under your control.

Sd/-

K.Rajaraman

Principal Secretary/Commissioner
of Commercial Taxes.

To

All Joint Commissioner (CT),
Territorial including,
Joint Commissioner (CT)
Large Taxes Payers Units

Copy to:

1. Additional Commissioner (SMR/Audit)
2. The Additional Government Pleader (Taxes),
High Court Chambers, Chennai 104.
3. All Deputy Commissioner (CT) Territorial."

14. Besides other directions, circular dated 03.02.2014, emphasises that principles of natural justice should be adhered to. In the case on hand, one of the challenges made to the assessment order is that when opportunity of hearing was sought, it was denied.

15. In SRC Projects, a Hon'ble Division Bench of this court, held as follows:

"27. We also hold, in the facts and circumstances of this case, the impugned order by

way of revision of assessment should not have been passed without giving the assessee an opportunity of personal hearing. But since the same has been denied, the impugned order is hereby quashed.

28. We, therefore, allow the appeals and are constrained to hold that the learned Judge of the writ court was not correct in his conclusion in dismissing the writ petitions, inter alia, on the ground of non-exhaustion of alternative remedy in the facts and circumstances of the case discussed above. The judgment of the learned Judge is set aside.

29. We, therefore, direct that the appellant/petitioner must appear before the second respondent in these appeals, who passed the impugned order, within a period of seven days from the date of getting a certified copy of this judgment and thereupon, the second respondent will fix the personal date of hearing in which the appellant must appear and the hearing should be concluded within two weeks thereafter. After such hearing is concluded, the second respondent is at liberty to pass orders in accordance with law after considering the petitioner's case, which will be presented in the course of such hearing.

We also do not observe anything on the merits of the case of either the petitioner or the Revenue. No costs. Consequently, miscellaneous petitions are closed."

16. In the light of the above circular, and the decision in SRC Projects Private Limited v. Commissioner of Commercial Taxes, Chennai and Another reported in (2010) 33 VST 333 (Mad), impugned order is set aside. Matter is remitted back to the Assessing Officer, to consider afresh, provide opportunity to the appellant, and pass order in accordance with law.

asr

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

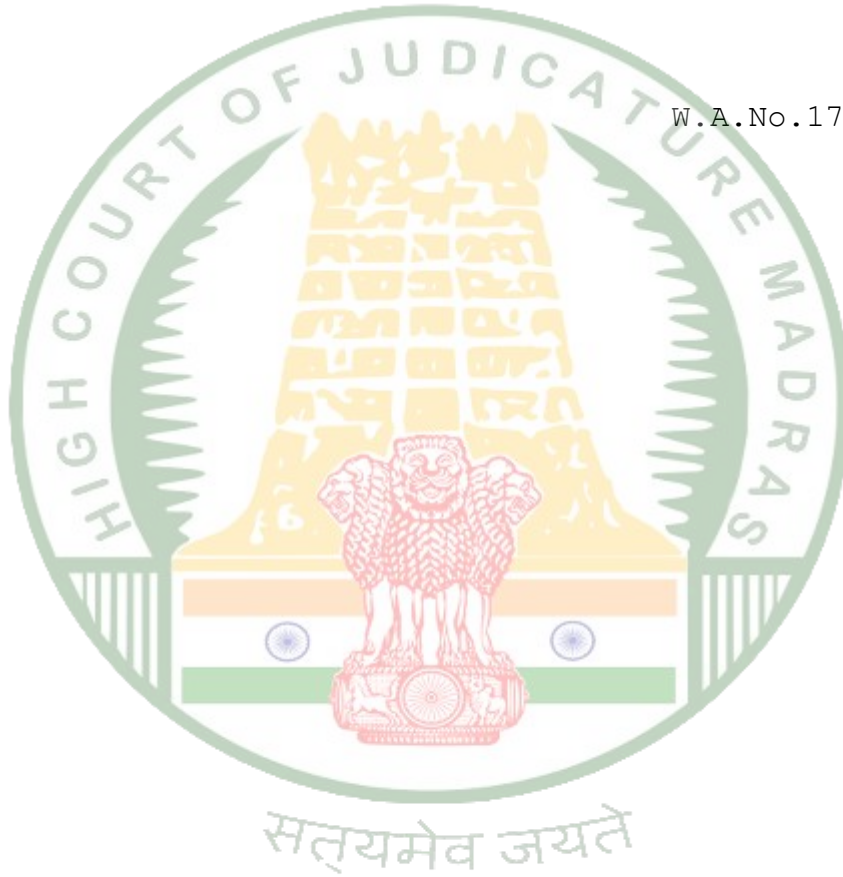
To

The Assistant Commissioner (CT)
Pammal Assessment Circle
No.32 & 33, Sripuram 2nd Street
Chromepet, Chennai - 600 044

+1cc to M/s.V.Sundareswaran, Advocate Sr.No.7096
+1cc to Special Government Pleader SR.no.7166

CNR(CO)
sm:1.3.2018

W.A.No.173 of 2018



WEB COPY