

In the High Court of Judicature at Madras

Dated : 24.9.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal Nos.1984 to 1987 of 2018 &
CMP.Nos.15824 to 15827 of 2018

Tvl.Devi Constructions, rep.
By its Proprietor P.Jayabal ...Appellant

Vs

The Assistant Commissioner (ST),
Salem Town (North) Circle, Salem. ...Respondent

APPEALS under Clause 15 of the Letters Patent to set aside the common order dated 10.7.2018 made in W.P.Nos.17172 to 17175 of 2018 and WMP.Nos.20435 to 20438 of 2018.

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue of Writ of Certiorari, calling for the records on the files of the respondent, in TIN : 33462663216/2011-12, TIN : 33462663216/2012-13, TIN : 33462663216/2013-14, TIN : 33462663216/2014-15 dated 27.03.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Appellant : Mr.R.Senniappan

For Respondent : Mr.V.Haribabu, AGP

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM, J)

These appeals by the assessee/dealer are directed against the common order dated 10.7.2018 passed in W.P.Nos.17172 to 17175 of 2018.

2. The said writ petitions were filed by the dealer challenging the assessment orders, all dated 27.3.2018, passed by the respondent herein under the provisions of the Tamil Nadu

Value Added Tax Act, 2006 for the years from 2011-12 to 2014-15.

3. The orders dated 27.3.2018 were questioned mainly on the ground that the Assessing Officer did not adhere to the directions/observations made by this Court in the earlier round of litigation namely in W.P.Nos.4099 to 4102 of 2018 dated 23.2.2018.

4. The writ petitions in W.P.Nos.4099 to 4102 of 2018 were filed by the appellant challenging the assessment orders for the years 2011-12, 2013-14, 2014-15 and 2015-16, all dated 20.12.2017. It was contended that the revision of assessment was based upon the details gathered from the official website of the Department and it was alleged that there was a mismatch between the returns filed by the appellant and that of the dealer at the other end. The learned Single Judge of this Court, after taking into consideration the decision made by one of us (TSSJ) in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343], allowed W.P.Nos.4099 to 4102 of 2018 by the said common order dated 23.2.2018. While doing so, the learned Single Judge directed the Assessing Officer to redo the assessment commencing from the stage of issuance of the show cause notice wherein a proposal to revise the assessment was made and to follow the guidelines/procedure issued by the Writ Court in the decision in JKM Graphics Solutions Private Limited, give an opportunity of personal hearing to the appellant and thereafter finalize the assessment.

5. The appellant approached the Writ Court again with the second batch of cases namely WP.Nos.17172 to 17175 of 2018 contending that the guidelines issued in the earlier writ petitions were not followed and that there was a serious violation of the principles of natural justice, that the documents sought for by the appellant was not furnished and that the explanation to the revision notices dated 18.12.2017/29.12.2017 were not considered. It was also contended that the Assessing Officer verbatim extracted the explanation and that the impugned assessment orders in the present writ petitions were passed without proper application of mind.

6. The Writ Court, while considering the present writ petitions, was of the opinion that since there was an alternate remedy available to the appellant by way of an appeal under Section 51 of the said Act, dismissed W.P.Nos.17172 to 17175 of 2018 by a common order dated 10.7.2018 after giving liberty to the appellant to file appeals before the Appellate Authority under the provisions of the said Act with a direction to the Appellate Authority to adjudicate the matters on merits and in accordance with law. In support of the conclusion, the Writ

Court referred to various decisions of the Hon'ble Supreme Court wherein it has been held that when there is an appeal remedy available under the Statute, the Constitutional Courts should not entertain the writ petitions without the party exhausting the remedies available under the Statute.

7. We have heard Mr.R.Senniappan, learned counsel for the appellant and Mr.V.Haribabu, learned Additional Government Pleader accepting notice for the respondent. With consent, the writ appeals are taken up for joint disposal.

8. The legal position is that when there is an alternate remedy available under the Statute, no party should be permitted to bypass such a remedy, more particularly, when the matter pertains to cases arising under the Taxation Statute. Equally, there is no dispute that there is a long line of decisions on the above proposition. However, exceptions have been carved out in those decisions themselves and such exceptions being that when the Authority has not followed the provisions of an Enactment or has acted in defiance of the fundamental principles of judicial procedure or has resorted to invoke the provisions, which are repealed or when an order has been passed in total violation of the principles of natural justice, there is absolutely no bar for the Constitutional Courts to exercise jurisdiction under Article 226 of The Constitution of India. Thus, availability of an alternate remedy is not always a universal bar for this Court to exercise its extraordinary jurisdiction under Article 226 of The Constitution of India, since the remedy is discretionary. Thus, we are required to examine, in the instant case, as to whether the case would fall under any of the exceptions, which have been carved out, for which purpose, we have to peruse the impugned assessment orders in the present writ petitions for the subject assessment years.

9. On a perusal of the impugned assessment orders in the present writ petitions, we find that the Assessing Officer did not apply his mind before passing the orders. Though the orders run to five pages, the first two pages contain verbatim repetition of the show cause notices dated 18.12.2017/ 29.12.2017 wherein there was a proposal made to revise the assessments. The next two pages namely the third and the fourth pages contain verbatim repetition of the objections dated 15.3.2018 given by the appellant to the said revision notices. The so-called finding rendered by the Assessing Officer is in the last paragraph, which consists of four lines. The Assessing Officer has not discussed about any of the contentions raised by the appellant in their reply dated 15.3.2018 objecting to the revision of assessment. The guidelines, which were relied upon by the appellant, have not been discussed.

10. The only reason assigned by the Assessing Officer was that the assessee admitted the discrepancies at the time of inspection before the Inspecting Officers. Time and again, this Court held that the alleged statement recorded before the Inspecting Officers cannot be used against the assessee when the assessment is sought to be reopened and even after the dealer submits their reply/objections to the revision of assessment.

11. The Hon'ble Division Bench of this Court, in the case of Madras Granites (P) Ltd. Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642], dealt with more or less an identical situation arising under the provisions of the Tamil Nadu General Sales Tax Act, in which, a proposal was received from the Enforcement Wing in Form D3 directing the Assessing Officer to complete the assessment in terms of the said proposal. The Hon'ble Division Bench of this Court held that the Assessing Officer cannot be directed to complete the assessment in a particular manner and that he is not bound by the instructions of the higher authorities. The operative portion of that judgment reads as follows :

"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 assessments. We hold that the assessments are not sustainable in law."

12. If the assessment orders, which were impugned in the present writ petitions, are allowed to stand, then it will tantamount to grant of approval to an illegal order. The assessment orders, which were impugned in the present writ petitions, are clear outcome of total non application of mind and non consideration of the objections filed by the dealer. Furthermore, the assessee pointed out that the revision notices dated 18.12.2017/29.12.2017 did not contain date wise purchase details, bill numbers, names of the sellers and value and in the absence of such details, it will not be possible for the dealer to verify the accounts. Therefore, the assessee requested the Assessing Officer to furnish the details for their verification and comparison of the accounts. This request made by the appellant in their reply dated 15.3.2018 has been totally ignored.

13. Thus, we are fully satisfied that the orders of assessment made in the present writ petitions have been passed

in total violation of the principles of natural justice and that they are in defiance of the fundamental principles of quasi judicial procedure and are out come of total non application of mind. In our considered view, the cases fall within the exceptions carved out by the Hon'ble Supreme Court wherein it has been held that the Court can exercise its discretionary power under Article 226 of The Constitution of India.

14. For the above reasons, the writ appeals are allowed and the common order dated 10.7.2018 is set aside. WP.Nos.17172 to 17175 of 2018 are also allowed, the impugned orders therein dated 27.3.2018 are set aside and the matters are remanded to the Assessing Officer to redo the assessments. The Assessing Officer, at the first instance, shall furnish full details of the alleged mismatch within 15 days from the date of receipt of a copy of this judgment. Thereafter, the appellant is granted 15 days to submit their objections duly supported by documents. On receipt of the objections, the Assessing Officer shall afford an opportunity of personal hearing, which shall be effective and redo the assessment in accordance with law. No costs. Consequently, the connected CMPs are closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

To
The Assistant Commissioner (ST), Salem Town (North) Circle,
Salem.

+1cc to Mr.R.Senniappan, Advocate SR.No.66566

+1cc to Special Government Pleader SR.No.95944

WA.Nos.1984 to 1987 of 2018 &
CMP.Nos.15824 to 15827 of 2018

GMV (22/10/2018)