IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.22545 to 22552 of 2018
and
WMP.Nos.26401 to 26408 of 2018

M/s.Alf Barik Leathers (P) Ltd.,
Represented by its Managing Director
Mr.Chiya Nadeem Ahmed ... Petitioner
(in WP Nos. 22545 to 22552 of 2018)

vs.

1. The State Tax Officer (Main)
Gudiyatham (West) Assessment Circle
Gudiyatham.

2. The Commercial Tax Officer
Enforcement
Central Enforcement Wing
Vellore Division.

3. The Joint Commissioner (ST)
Territorial Vellore Division
Vellore. ..Respondents
(in WP Nos. 22545 to 22552 of 2018)

WP.22545 TO 22552/2018:

Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the impugned proceeding of the first respondent in TIN Nos.:33614342737/10-11, 33614342737/11-12, 33614342737/12-13, 33614342737/13-14, 33614342737/14-15, 33614342737/15-16, 33614342737/16-17 and 33614342737/17-18 respectively and quash the impugned order dated 28.06.2018 as barred by limitation and also one passed without considering the objections filed by the petitioner and therefore, contrary to the provisions of the TNVAT Act and against the principles of natural justice and further direct the first respondent to consider the objections filed by the petitioner in an independent manner and pass a fresh assessment order not being influenced by the report of the enforcement wing officials.

For Petitioner : Mr.P.Rajkumar
(in WP Nos. 22545 to 22552 of 2018)

For Respondent : Mr.M.Hariharan
Additional Government Pleader (Tax)
(in WP Nos. 22545 to 22552 of 2018)

COMMON ORDER

All these writ petitions are filed challenging the orders of assessment passed in respect of the assessment years 2010-2011 to 2017-2018.

2. Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondents. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself, since the issue involved in these writ petitions is already covered by an earlier order passed by this Court in favour of the petitioner/Assessee.

3. Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondents.

4. The grievance of the petitioner before this Court against the impugned orders of assessment are as follows:

(a) The very notice of proposal issued on 14.02.2018 in respect of all the assessment years itself is a defective notice, as the same did not satisfy the mandatory requirement of providing reasonable opportunity to the petitioner to place their objections since the said notices did not indicate any date, within which, either for filing the reply by the petitioner or for providing an opportunity of personal hearing to them.

(b) The very notices of proposal were issued simply based on a inspection report filed by the Inspecting Authorities and therefore, it was not an outcome of an independent application of mind of the Assessing Officer.

(c) In spite of such defective notices, the petitioner filed detailed objections in respect of all the assessment years and such objections were not considered by the Assessing Officer.

(d) The Assessing Officer has chosen to reject the objections filed on the reason that the Assessee accepted the issue at the time of inspection conducted by the Enforcement Officials and therefore, the objection now filed and explained is an after thought.

(e) Therefore, it is evident that the Assessing Officer, while making the assessment, has been simply carried over by the inspection conducted by the Enforcement Officials and their report filed in pursuant to such inspection, without applying his independent mind to the objections raised by the petitioner.

5. By raising those contentions, the petitioner seeks to set aside the impugned orders of assessment.

6. The learned Additional Government Pleader for the respondents fairly submitted that the similar issue raised was considered by this Court and the matter was remitted back to the Assessing Officer to re-do the assessment once again, after considering the objections raised by the Assessee therein on merits and in accordance with law.

7. Perusal of the notices of proposal dated 14.02.2018, the reply submitted by the petitioner and the consequential assessment orders passed by the first respondent would undoubtedly, show that the above contentions raised by the petitioner before this Court have justification. It is seen that the Assessing Officer, while issuing the notices of proposal, has not, in fact, invited the petitioner to make their objections by stipulating any time limit. Therefore, it is evident that the very notices of proposal are defective and thus, non-est. However, it is an admitted fact that the petitioner despite such defective notice, made their objections and the same were received by the Assessing Officer. But, unfortunately, the Assessing Officer has chosen to reject the objections only on the reason that the Assessee has already chosen to accept the issue at the time of inspection conducted by the Enforcement Officials and thus, they are not entitled to raise the very same objections as a reply to the notices of proposal. Thus, according to the Assessing Officer, such explanation is an after thought. I failed to understand as to how such reasoning of the Assessing Officer in rejecting the objections is expected to be sustained, more particularly, when the fact remains that the Assessing Officer, being a quasi-judicial authority, is bound to make the orders of assessment with independent application of mind to the facts and circumstances and the objections raised by the petitioner/Assessee. Needless to say that the report filed by the Enforcement Officials may be one of the material for assessment and at any event, the same cannot be the sole reason or criteria for the Assessing Officer to conclude the assessment. Therefore, it is evident that the Assessing Officer, in these cases, has not acted with independent application of mind, while passing the impugned orders of assessment. On the other hand, it is apparent that he has been carried over by the report filed by the Enforcement Officials, which course, in the considered view of this Court, is not sustainable. Accordingly, this Court is inclined to set aside the impugned orders of assessment and remit the matter back to the Assessing Officer to re-do the assessment, once again, on

merits and in accordance with law, after giving due opportunity of hearing to the petitioner.

8. At this juncture, the learned counsel for the petitioner pointed out that the Officer who sent the inspection report has now become the Assessing Officer and occupied the office of the first respondent. Therefore, he contended that in all fairness, it may not be proper for the said Officer himself to re-do the assessment afresh, since his own report is already there on record and would thus, possibly, prejudice his mind.

9. I find some force in the above submission made by the learned counsel for the petitioner, even though this Court is not finding any personal motive of the said Officer, who sent the report, against the petitioner. However, since such Officer himself has now assumed the office of the first respondent as the Assessing Officer, in the interest of justice, it is better, if any other independent Officer is appointed by the third respondent to pass fresh orders of assessment. Therefore, all these writ petitions are allowed under the following terms:

(a) The impugned orders of assessment are set aside and the matter is remitted back to the new Assessing Officer to be appointed by the 3rd respondent, for re-doing the assessment, once again, on merits and in accordance with law, after considering the objections raised by the petitioner and also by giving an opportunity of personal hearing to the petitioner.

(b) The third respondent shall, thus, appoint another competent Officer immediately to make the orders of assessment in the place of the first respondent, in view of the above stated facts and circumstances and findings rendered by this Court.

(e) Consequently, the concerned Assessing Officer shall complete the entire process and pass the orders of assessment as directed supra, within a period of four weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mk

To

1. The State Tax Officer (Main)
   Gudiyatham (West) Assessment Circle
   Gudiyatham.

2. The Commercial Tax Officer
   Enforcement
   Central Enforcement Wing
   Vellore Division.

3. The Joint Commissioner (ST)
   Territorial Vellore Division
   Vellore.

+1cc to Mr.P.Rajkumar, Advocate sr.no.59986
+1cc to Special Government Pleader(Taxes)sr.no.59986

W.P.Nos.22545 to 22552 of 2018

nr 26/09/2018