In the High Court of Judicature at Madras

Dated : 05.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.2382 to 2389 of 2018
& WMP.Nos.2895 to 2902 of 2018

Tvl.V.D.R.Impex, rep.by
its Partner R.Narayanan ...Petitioner in all

Vs

The Assistant Commissioner (CT),
Vellore (South) Assessment Circle,
Vellore. ...Respondent in all

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the files of the respondent respectively in TIN No.33804221722/2010-11, TIN No. 33804221722/2015-16, TIN No.33804221722/2013-14, TIN No. 33804221722/2012-13, TIN No. 33804221722/2011-12, CST No.355512/ 2014-15, CST No.355512/2013-14 and TIN No. 33804221722/2014-15, all dated 19.7.2017 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.G.Dhana Madhri, GA

COMMON ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. In view of the glaring error and palpable abdication of the statutory powers of the Adjudicating Authority, which are apparent on the face of the impugned orders, these writ petitions are taken up for joint disposal even at the stage of admission.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, was issued with notices proposing to revise the turnover for the assessment years 2010-11 to 2012-13 under the State Enactment by

notices dated 02.2.2017, for the assessment years 2014-15 both under the State and Central Enactments and 2015-16 under the State Enactment by notices dated 28.2.2017 and for the assessment years 2013-14 both under the State and Central Enactments dated 15.3.2017. The petitioner submitted their reply dated 26.6.2017 separately for each of the assessment years.

3. It has to be seen as to what the Assessing Officer is required to do on receipt of the reply to the revision notices. It is not in dispute that the impugned revision of assessment is based on an inspection conducted by the officials of the Enforcement Wing in the place of business of the petitioner during the period from 20.6.2016 to 12.7.2016, in which, it appears that certain defects were pointed out and based upon the report received by the Assessing Officer from the officials of the Enforcement Wing, the revision notices were issued.

4. 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 the said 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."

5. In the instant case, the revision notices are based upon the proposal received from the Enforcement Wing. The respondent, while completing the assessment and passing the impugned assessment orders, has vertabim extracted the entire objections given by the petitioner vide their reply dated 26.6.2017. Having extracted the objections, the respondent was required to afford an opportunity of personal hearing to the dealer, thereafter consider the proposal as well as the objections, discuss the matter and pass a reasoned order. Unfortunately, in a single

line, the respondent overruled the petitioner's objections on the ground that no supporting documentary evidence was produced.

6. Such assessment orders have been held to be illegal in several decisions of this Court as well as the Hon'ble Supreme Court. One such decision is Steel Authority of India Ltd. Vs. STO, Rourkela-I Circle [reported in (2008) 16 VST 181 (SC)] wherein it has been held that the reason is the heartbeat of every conclusion and it introduces clarity in an order and without the same, it becomes lifeless. Further, with regard to the role of the Assessing Officer, it was held that an order cannot be passed by the Assistant Commissioner without examining the various issues raised and without passing a reasoned order. What the respondent has done is exactly what the Hon'ble Supreme Court has held to be unsustainable. The above two reasons are sufficient to hold that the impugned assessment orders are against law, in violation of the principles of natural justice and devoid of reasons and are liable to be set aside.

7. Accordingly, the writ petitions are allowed, the impugned assessment 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 authorized representative of the petitioner, independently decide the objections and pass a reasoned order on merits and in accordance with law without in any manner influenced by the report of the officials of the Enforcement Wing. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Vellore (South) Assessment Circle, Vellore.

+1cc to Mr.R.Senniappan, Advocate SR.No.9241
+1cc to Special Government Pleader (Taxes) SR.No.8971

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WMP.Nos.2895 to 2902 of 2018

RV(CO)
GN(02/03/2018)