IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.08.2018
CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.18243 of 2018
and
W.M.P.No.21554 of 2018

UTSAV HOUSING AND INFRASTRUCTURE (INDIA) PRIVATE LTD
Rep. by its Director,
D.Satish Kannan,
No.118-A, New Trichy Branch Road,
Salem - 636 006. ..Petitioner

Vs

Sales Tax Officer,
Annadhanapatti Assessment Circle,
Commercial Taxes Building,
Pitcharts Road, Salem - 636 007. ..Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records of the case and quash the impugned order passed in TIN/33822765450/2014-15 dated 22.06.2018 by the respondent and further direct the Respondent to re-do the assessment after considering the objections without reference to enforcement authority report in accordance with the law after granting personal hearing to the petitioner.

For Petitioner : Mr.N.Murali
For Respondent : Mr.M.Hariharan,
Additional Government Pleader

O R D E R

Since the issue involved in this case is squarely covered by the decision of this Court made in W.P.Nos.18198 to 18203 of 2018 dated 18.07.2018, the main writ petition is taken up for final disposal without waiting for a counter by the respondent.

2. The petitioner/assessee is aggrieved against the order of assessment dated 22.06.2018 passed in respect of assessment year 2014-15. Consequently, the petitioner seeks for a direction to the respondent to redo the assessment after considering the objections without reference to the Enforcement Authority report, after granting personal hearing to the petitioner.

3. The main objection raised in this writ petition are in two fold, as follows:

a) The First one is that during the year they had constructed only 7 flats and if at all any liability should be worked out that should be restricted only for 7 flats. Accordingly, the inspecting authorities arrived the sale value by taking the purchases after adding freight and gross profit. The petitioner also admitted and paid tax for the year 2014-15 @ Rs.5,52,181/- as transfer of property of goods involved in execution of works contract during the year 2014-15. However, the Respondent by adopting the enforcement wing report estimated sale value of 24 flats at Rs.2,88,15,600/- and demanded tax on the same. The respondent failed to appreciate that there cannot be any tax on the sale value of the flats. The tax on the value of sale value of the flat means, the Respondent is levying tax on the immovable property which is not permitted under the TNVAT Act, 2008.

b) The second aspect is that the Respondent has not considered the objection of double taxation since already the Respondent estimated the transfer of property of goods involved in the execution of works contract as defect No.1 and also collected tax. Now again the Respondent cannot demand tax on the sale value of the flats. The manner in which the assessment has been framed is against the principles of taxation on works contract. Moreover, the levy of tax on works contract would be on the value of transfer of property in goods involved in execution of works contract. The petitioner produced evidence that the property remains in the name of the company by producing the property tax receipt issued by the Corporation of Salem for the 10 unsold plots during the year. If the Respondent has wanted to verify the contention of the petitioner with more documents, which was in the opinion of the Respondent is necessary, then nothing prevented the Respondent to call for such documentary evidences form the petitioner before proceeding to pass the impugned order. Thus there is a violation of principles of natural justice.

4. The case of the petitioner is that the Assessing Officer considered the objections filed by the petitioner, more particularly, in respect of the objection made in the assessment on the sales turn over of flats on the ground that double taxation has been proposed. Thus, it is contended that the Assessing Officer found such objections are reasonable and therefore, wanted to deviate the proposal already made. However, the Assessing Officer sent the deviation proposal to the Joint Commissioner Sales Tax Enforcement through the Deputy Commissioner Sales Tax, Salem, which in turn was rejected with instruction to implement the original proposal. Therefore, it is contended that the present impugned order of assessment passed, based on the instruction received from the higher officials, rejecting the deviation proposal submitted by the Assessing Officer, is not an order passed with independent application of

mind and on the other hand, it was made at the instruction of the higher-ups. Therefore, it is contended that it cannot withstand the scrutiny of law.

5. Learned counsel for the respondents submitted that in order to have checks and balance, the practice of sending deviation proposals to the higher authorities is in force and the Assessing Officer, on receipt of the communication from the higher official with regard to the deviation proposal, has to pass the order of assessment, based on such communication.

6. Learned counsel for the petitioner invited this Court's attention to the order passed in W.P.Nos.18198 to 18203 of 2018 dated 18.07.2018, arising out of similar situation, in support of his contention that the Assessing Officer is not bound to decide the matter, based on the direction issued by the superior officer and on the other hand, he is required to decide the case based on the reply filed by the dealer and the documents that are produced before him. In the said decision, this Court at paragraph No.5 to 9 has observed as follows:

> 5. Time and again, this Court has been holding that the Assessing Officer is an independent Authority and no superior can dictate terms as to the manner, in which, the Assessing Officer has to complete the assessment. Earliest of the decisions on this point is the decision of the Hon'ble Division Bench in the case of Madras Granites Vs. CTO [reported in (2006) 146 STC 642] wherein the Hon'ble Division Bench held as follows :
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> Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement, has directed the Assessing Officer to complete the assessment on the basis of the proposal in D-3 form, we find that the Assessing Officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the Assessing Officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal. 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.

6. A similar view was taken by this Court in the case of Amutha Metals Vs. CTO, Mannady East Assessment Circle [reported in (2007) 9 VST 478] wherein it has been held thus :

The objections had to be considered by the Assessing Officer on their own merits. The assessment orders had been passed without considering the objections and by taking note of the proposal of the Enforcement Officers. Therefore, the orders of assessment had to be set aside and the Assessing Officer was directed to consider each one of the objections raised by the petitioners and give reasons.

7. This Court, in the case of Cipla Limited Vs. AC (CT), Porur Assessment Circle [W.P.Nos.16580 to 16584 of 2018 dated 04.7.2018], tested the correctness of some what similar assessment orders, which were passed by the Assessing Officer solely based upon the directions issued by a superior officer. This Court set aside those assessment orders holding as follows :

However, the Assessing Officer was bound over and prevented from exercising his statutory power by the direction issued by his superior officer and the direction issued to the respondent to complete the assessment in a particular manner is strictly in conflict with the decision of 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]. Therefore, even assuming that any such direction is given, it is not binding on the Assessing Officer and he is required to decide the issue uninfluenced by any such direction based on the documents produced by the dealer.

8. The above referred to decisions have been quoted in this order in order to strengthen the hands of the Assessing Officer and to remind her that she is an independent officer, that no direction from a superior officer is binding on the Assessing Officers and that she is required to decide the case based on the reply filed by the dealer and the documents that may be produced. Therefore, the respondent should not be bound over by any direction issued by the Joint Commissioner and

should be allowed to take a decision independently in the matter.

9. 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 is directed to afford an opportunity of personal hearing, consider the objections filed by the dealer and if any records are required from the dealer, direct the dealer to produce the same, give an effective opportunity to the dealer and redo the assessments in accordance with law with an independent mind without, in any manner, being influenced by the directions issued by either the Joint Commissioner or the Deputy Commissioner or any of her superiors. No costs. Consequently, the connected WMPs are closed.

7. Going by the facts and circumstances of the above said case and the facts and circumstances of the present case, I find that both are one and the same and therefore, the said order is squarely applicable to the present case as well. It is stated that the said order has become final and the Revenue has not challenged the same any further. Since the present issue has already been dealt with in detail in the above said order with which I respectfully agree, I am not reiterating the same once again in this order, except to apply the same to the present case and allow this writ petition accordingly.

8. Thus, the writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the respondent for passing a fresh order of assessment on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner, uninfluenced by the instruction given by the higher officials with regard to the deviation proposal. It is made clear that this Court has not expressed any view on the merits of the assessment, as it is for the respondent to consider and decide once again afresh. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.



Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vsi/krk

To

The Sales Tax Officer,
Annadhanapatti Assessment Circle,
Commercial Taxes Building,
Pitcharts Road, Salem - 636 007.

+1cc to Mr. N.Murali, Advocate, S.R.No. 59224
+1cc to the Special Government Pleader, S.R.No. 59420

W.P.No.18243 of 2018

VGI(CO)
GN(17/09/2018)