IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.19187 to 19189 of 2018
and
W.M.P.Nos.22564 to 22566 of 2018

Tvl.Olympic Cutting Dies,
Rep., by its Proprietor,
Kaspa 'A' Kamaraj Nagar,
Ambur, Vellore District-635 802.
... Petitioner in all W.Ps.

-vs-

The Assistant Commissioner (ST),
Ambur Assessment Circle-635 802.
... Respondent in all W.Ps.

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in TIN 33334264806/2014-15, 2015-16 and 2016-17 respectively, dated 29.06.2018 and quash the same.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mrs.G.Dhana Madhri,
Government Advocate (Taxes)

COMMON ORDER

Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate (Taxes) accepting notice on behalf of the respondent.

2.With the consent on either side, these writ petitions are taken up for final disposal.

3.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”), has filed these writ petitions challenging the revision of assessments for the assessment years 2014-15, 2015-16 and 2016-17 vide orders dated 29.06.2018.

4.The petitioner, on receipt of the revision notices, dated 29.01.2018, submitted their reply dated 28.03.2018. It is admitted by the petitioner that the only ground canvassed in the reply was questioning the VAT audit conducted in the business premises of the petitioner on the ground that there was no authorization by the Commissioner as required under the TNVAT Act.

5.The respondent has dealt with the said objection and taken note of the fact that the petitioner failed to produce documents before the Enforcement Wing or before him and accordingly, confirmed the proposal.

6.The petitioner had relied upon the decision of this Court in the case of Jeevan Buy N.Save vs. Commissioner of Commercial Taxes & Ors., reported in (2018) 50 GSTR 306 (Mad).

7.This Court had an occasion to consider the validity of similar orders in the case of M/s.Empress Audio vs. Commissioner of Commercial Taxes and Others in W.P.No.6031 of 2018 dated 28.04.2018 and the Court held that the authorization was by the Commissioner, the competent Authority. The operative portions of the order read as follows:-

> "19. I agree with the submissions made by Ms.G.Dhana Madhurai, that it is impossible for the Commissioner to name Deputy Commercial Tax Officers or Commercial Tax Officers, who will conduct the VAT Audit in respect of a particular dealer. The Commissioner being the Head of Department is required to discharge several duties, which are onerous. Therefore, the manner in which the office and the staff have to be utilised and administrated is well open to be regulated by the Head of Department. It is not for the dealer to dictate terms as to how the Commercial Tax Department should organise its business. The directives issued to the Joint Commissioner to take forward the direction to conduct audit is an administrative decision by the Commissioner and being the Head of Department, it is well within his jurisdiction to issue such direction for effective and efficient administration of his department. Thus, the petitioner by placing reliance on the expression "authorised" used in the statement cannot discredit the entire proceedings alleging the same to be without jurisdiction. The Court being fully satisfied that VAT Audit has been authorised by the Commissioner in accordance with Section 64(4) of the Act, is not inclined to accept the case of the petitioner.
>
> 20. At this juncture, it would be relevant to take note of the submissions made by Mr.N.Inbarajan. Section 48 of the Act, gives power to the Government to appoint officers of the

Commercial Taxes Department for the purpose of performing the functions conferred on him by under the Act. Thus, when a power is delegated by the Government to a particular officer by designation, such officer alone shall exercise the power. There can be no quarrel over this legal position. The Government at least in two instances, has conferred this power on the Commissioner namely, the power under Section 22(3) and Section 64(4). Therefore, it is the Commissioner, who shall exercise this power and select assessments for the purpose of detailed scrutiny, regarding the correctness of the returns submitted by the dealer. There is a cap with regard to the power exercisable under Section 22(B) by prescribing 20%, as the total number of cases to be selected for scrutiny. The Rule, namely Rule 10(11) lays down as to the method of selection to be done by the Commissioner. Thus, the Government while delegating its power to the Commissioner has also circumscribed the manner in which the power has to be exercised. The power under Section 64(4) of the Act, is undoubtedly a much wider power than Section 22(3). This provision confers power on the Commissioner to order for audit of the business of any registered dealer. While exercising the power under Section 64(4) what the Commissioner of Commercial Taxes is expected to do, is to order for an audit of the business of any registered dealer. The statute prescribes the rank of the officer, who can be authorised to conduct an audit. Therefore, the requirement under the provision is for ordering for audit of the business of a dealer and upon such order being passed, the officials in the hierarchy are to carry out the directions of the Commissioner. Thus, when the Commissioner orders for an audit, which would be state wide obviously, as the Head of the department, he cannot be expected to name the officer, who will go to the business premises of the dealer for the purpose of audit. These matters have to be assigned to the official hierarchy and to be carried out as per the Rules of business followed by the department. Thus, the statute states that the Commissioner is the authority, who may order for an audit and once the order is passed by the Commissioner, it is for the officials of the department to carry out the order.

21. In my considered view, this is precisely what has been done in the instant case. As pointed out earlier mere usage of the expression authorised

by the Joint Commissioner in his proceedings, does not mean that the Joint Commissioner has commenced the audit on his own accord. It has to be borne in mind that the statute uses the expression "order", and does not use the expression "authorise". Thus, what is required under Section 64(4) is an order of the Commissioner and if there is an order to the said effect, then authorisation of lower level officers, by officers subordinate to the Commissioner, cannot be termed as ordering an audit, but it is a proceedings by which the order passed by the Commissioner, is implemented or carried forward."

8.In the light of the above legal position, the stand taken by the respondent in the impugned order that the VAT Audit conducted was well within the jurisdiction of the officer is a correct finding.

9.So far as the next finding rendered by the respondent is concerned, the same also is a correct finding because, the petitioner failed to produce any documentary evidence before the Assessing Officer. Though the petitioner did not produce documents before the inspecting officials, that will not be a bar for the petitioner to produce documents before the Assessing Officer.

10.The learned counsel appearing for the petitioner accepts the mistake committed by the dealer and pleads that one more opportunity may be granted to the dealer considering that the dealer is a very small dealer having a meager turnover.

11.Considering the above facts, this Court is inclined to give one more opportunity to the petitioner to go before the Assessing Officer. Accordingly, these writ petitions are disposed of by directing the petitioner to treat the impugned proceedings as show cause notices and submit their objections within a period of fifteen days' from the date of receipt of a copy of this order. Along with the objections, requisite documents in support of the claim of the petitioner should be annexed. On receipt of the objections, the respondent is directed to afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. Till then, no coercive action shall be initiated against the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (ST),
Ambur Assessment Circle-635 802.

+1 CC to Mr. Adithya Reddy, Advocate sr 50589.
+1 CC to The Spl. Govt. Pleader (T) sr 50522.

W.P.Nos.19187 to 19189 of 2018

SP(11/08/2018)