In the High Court of Judicature at Madras

Dated : 22.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal Nos.2548 & 2549 of 2018
& CMP.No.20544 & 20545 of 2018

M/s.Renault Nissan Automotive
India Pvt. Ltd., rep.by its authorized
signatory Mr.Sambath Kumar

...Appellant/Petitioner

Vs

The Deputy Commissioner-II (FAC),
Large Tax Payers Unit, No.34,
Montieth Road, Egmore, Chennai-8.

...Respondent/Respondent

APPEALS under Clause 15 of the Letters Patent to set aside the common order in W.P.Nos.24876 and 24877 of 2017 dated 23.10.2018.

W.P.Nos.24876 and 24877 of 2017

Writ Petitions under Article 226 of the Constitution of India Praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a writ of certiorari, or any other appropriate writ, order or direction.

i) Call for records of the respondent in CST 981508/2014-15 and quash the order dated:28/07/2017 passed therein (in WP.No.24876 of 2017) and

ii) Call for the records of the respondent in CST 981508/2015-2016 and quash the order dated:28/07/2017 passed therein(in WP.No.24877 of 2017) respectively.

For Appellant : Mr.R.L.Ramani, SC assisted by Mr.B.Raveendran

For Respondent : Mr.Mohammed Shaffiq, GP assisted by Mrs.G.Dhana Madhri, GA

COMMON JUDGMENT

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

These appeals filed by the appellant - dealer are directed against the common order passed in W.P.Nos.24876 and 24877 of 2017 dated 23.10.2018.

2. The appellant is a registered dealer on the file of the respondent under the provisions of the Central Sales Tax Act, 1956 (hereinafter called the Central Enactment) and the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the State Enactment). The appellant has filed the said writ petitions challenging the assessment orders for two assessment years namely 2014-15 and 2015-16 under the Central Enactment. As could be seen from the said common order impugned before us, the assessee had categorically stated that they were not questioning the merits of the assessments, but were only questioning the assessment orders on the ground of lack of jurisdiction and also on the ground of violation of the principles of natural justice.

3. We find from the said impugned common order that the learned Single Judge had specifically recorded in paragraph 20 of the said impugned common order that the assessment orders were challenged only on two grounds namely on the ground of violation of the principles of natural justice and also on the ground of want of jurisdiction. Both the grounds raised by the appellant were negatived and the writ petitions were dismissed giving liberty to the appellant to file statutory appeals before the First Appellate Authority. We have been called upon to decide the correctness of the said impugned common order.

4. Mr.R.L.Ramani, learned Senior Counsel, assisted by Mr.B.Ravindran, learned counsel appearing for the appellant has vehemently contended that the finding rendered by the learned Single Judge is contradictory. In this regard, the learned Senior Counsel has drawn our attention to paragraphs 25 and 32 of the said impugned common order. It is further submitted that the learned Single Judge came to the conclusion that the appellant had made out a case, yet he did not exercise his jurisdiction under Article 226 of The Constitution of India on the ground of violation of the principles of natural justice.

5. The learned Senior Counsel appearing for the appellant would submit that the Assessing Officer completed the revision of assessment by placing reliance on the decision of the High Court of Andhra Pradesh and Telungana in the case of Larsen & Toubro Ltd. Vs. State of Andhra Pradesh [reported in (2016) 88 VST 422]. The learned Senior Counsel has referred to the assessment orders under the provisions of the Central Enactment for the assessment years 2014-15 and 2015-16 in respect their marketing company, which is situated in Andhra Pradesh wherein the concerned Assessing Officer had verified Form E1/E2 and C Forms and found the same to be in order and accordingly, allowed exemption on the turnover under Section 6(2)(a)/(b) of the Central Enactment.

6. It is further pointed out by the learned Senior Counsel appearing for the appellant that in the counter affidavit filed by the respondent in the said writ petitions, it has been stated that though the buyers namely M/s.Nissan Motor India Private Limited and M/s.Renault India Private Limited are not entitled to claim exemption, the respondent has not assessed them to tax rejecting the exemption claim since he has no jurisdiction to make assessment in respect of the dealers, who got registered in other States.

7. Referring to this contention, it is submitted that this can hardly be a reason for increasing the appellant's turnover by adding 25% to the reported turnover and that the same is without jurisdiction. It is further pointed out that increase in turnover cannot be done in the circumstances as pointed out by the respondent and therefore, the said impugned common order is in total violation of the principles of natural justice and lacking in jurisdiction.

8. Per contra, Mr.Mohammed Shaffiq, learned Special Government Pleader, assisted by Mrs.G.Dhana Madhri, learned Government Advocate, submits that the learned Single Judge, after considering the contentions advanced, came to the conclusion that serious disputed questions of fact have to be gone into to decide the nature of sale under Section 3 of the Central Enactment. He would further submit that the learned Single Judge also noted that the appellant was fully aware as to what is the case they have to meet before the Assessing Officer, that two opportunities for personal hearing were granted and that the explanation offered was considered and only thereafter, the assessments were completed. He would also submit that if the appellant is aggrieved, they have to prefer statutory appeals before the First Appellate Authority. Furthermore, the learned Single Judge also examined the jurisdiction of the respondent under Section 27 of the State Enactment and held that the power to revise the assessments is very much vested with the respondent.

9. The learned Special Government Pleader, in order to demonstrate as to what would be a 'sale' within the scope of Section 3(a) and (b) of the Central Enactment, has placed reliance on the decision of the Hon'ble Supreme Court in the case of A & G Projects and Technologies Ltd. Vs. State of Karnataka [reported in 2009 (2) SCC 326].

10. By way of reply, the learned Senior Counsel has referred to the invoices raised by the appellant and pointed out that the consignee's name is the appellant's marketing company located in Andhra Pradesh, that the Assessing Officer in the State of Andhra Pradesh took into consideration the statutory forms and granted exemption and that the Assessing Officer of the appellant cannot sit in judgment over the said decision of the Authorities of the State of Andhra Pradesh. It is further submitted that there are several decisions, which are in support of the assessee's case and produced some of them namely

(i) East India Corporation Limited Vs. State of Tamil Nadu [reported in (1975) 36 STC 370];

(ii) DC (CT), Tiruchirapalli-20 Vs. Sarathi Agencies [reported in (1990) 78 STC 126];

(iii) Duvent Fans Pvt. Ltd. Vs. State of Tamil Nadu [reported in (1999) 113 STC 431];

(iv) State of Tamil Nadu Vs. Hydels Engineers (P) Ltd. [reported in (2010) 35 VST 262]; and

(v) National Small Industries Corporation Ltd. Vs. State of Tamil Nadu [reported in (2014) 67 VST 414].

11. We have heard the learned counsel for the parties and carefully perused the materials placed.

12. As pointed out by us in the preceding paragraphs and as noted by the learned Single Judge, the assessee has not canvassed the merits of the assessments in the said writ petitions. This submission is reiterated before us. Therefore, we are required to examine (i) the correctness of the order passed by the learned Single Judge holding that the respondent has jurisdiction under Section 27 of the State Enactment for revising the assessments and (ii) the question as to whether the learned Single Judge was right in holding that there has been no violation of the principles of natural justice. We take up the second issue first.

13. Admittedly, the assessee was issued with the notices

proposing revision of assessments vide notices dated 24.1.2017. We find that the said notices set out the circumstances, under which, the Assessing Officer proposed to add 25% to the appellant's reported turnover. The appellant did not challenge the revision notices nor contended that they were beyond the jurisdiction of the respondent under Section 27 of the State Enactment, but submitted to the jurisdiction of the respondent and also sent their reply vide objections dated 24.2.2017. We find that the objections are elaborate and that the appellant also sought for an opportunity of personal hearing in their objections.

14. The respondent acceded to the request made by the assessee and afforded an opportunity of personal hearing not once, but twice. It is submitted by the respondent that the case was discussed, after which, the Assessing Officer completed the assessments and passed the assessment orders dated 28.7.2017.

15. On a perusal of the objections given by the assessee dated 24.2.2017, we are of the clear view that the assessee was fully aware as to what is the case they have to meet. Therefore, we are of the view that it cannot be stated that there had been violation of the principles of natural justice.

16. One more submission advanced before us was as regards reference to the decision of the High Court of Andhra Pradesh and Telungana in the case of Larsen & Toubro Limited. The assessee's case is that the Assessing Officer did not put it to them that he proposed to place reliance on the decision in the case of Larsen & Toubro Limited and basing his conclusion on that decision is erroneous and is in violation of the principles of natural justice.

17. On a reading of the assessment orders dated 28.7.2017, we find that the Assessing Officer had given reasons, which, in his opinion, would justify his action in adding 25% to the assessee's reported turnover. The Assessing Officer stated that his finding is reinforced by the decision in the case of Larsen & Toubro Limited. Therefore, we are of the prima facie view that the finding rendered by the Assessing Officer is not solely based upon the judgment in the case of Larsen & Toubro Limited. Therefore, on this score, the assessee cannot contend that there had been violation of the principles of natural justice.

18. This leaves us to decide the question of jurisdiction of the respondent. Undoubtedly, Section 27 of the State Enactment empowers the respondent to revise the assessments. The assessee's case before us is not questioning the jurisdiction of the respondent under Section 27 of the State Enactment, but as to the manner, in which, he has exercised his jurisdiction and the effect of the assessments, which had attained finality in

the State of Andhra Pradesh wherein the assessee's marketing companies have been assessed and the turnover have been exempted.

19. In our considered view, these are all issues touching upon the merits of the case, which we shall not venture into, as the assessee did not want us or even the learned Single Judge to go into the merits of the case, but only contended that the assessments are in violation of the principles of natural justice and are without jurisdiction. We fully endorse the view taken by the learned Single Judge with regard to the jurisdictional issue and more particularly the finding rendered in paragraph 25 of the said impugned common order.

20. For the foregoing reasons, we are of the considered view that there is no error in the said impugned common order passed by the learned Single Judge in dismissing the said writ petitions and simultaneously granting liberty to the assessee to file appeals before the First Appellate Authority. Furthermore, the learned Single Judge extended the time for filing the appeals for a period of 30 days and directed the Appellate Authority to entertain the appeals on merits without reference to the period of limitation. One more protection granted to the assessee is by directing the respondent not to take any coercive steps against the assessee till the appeals are filed within the time stipulated. Thus, we are fully satisfied that the learned Single Judge committed no error in dismissing the said writ petitions and issuing consequential directions. In the light of the above discussions, the appellant has not made out any case for interference.

21. Accordingly, the above writ appeals fail and are accordingly dismissed. No costs. Consequently, the connected CMPs are also dismissed.

22. The appellant is granted 30 days' time from the date of receipt of a copy of this common judgment to file appeals before the First Appellate Authority and if the same are filed within the said period, the Appellate Authority shall entertain the appeals without reference to the question of limitation. Till the expiry of 30 days time period, the respondent shall not initiate any coercive action against the assessee.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner-II (FAC),
Large Tax Payers Unit, No.34,
Montieth Road, Egmore, Chennai-8

+1cc to Mr.B.Raveendran, Advocate, S.R.No.79410

+1cc to the Spl Government Pleader, S.R.No.80122

WA.Nos.2548 & 2549 of 2018 &
CMP.Nos.20544 & 20545 of 2018

JP(CO)
GSP(11/12/2018)