BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.09.2018**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.11958 to 11960 of 2018
and
W.M.P.(MD).Nos.10924 to 10926 of 2018 in W.P.(MD).Nos.11958 to 11960
and
W.M.P.(MD).No.12171 of 2018 in W.P.(MD).No.11959 of 2018

Tvl.Senthil Spinners Pvt. Ltd.,
rep. by its Director R.Arunkarthick,
No.278, Thadicombu Road,
Dindigul. .. Petitioner in all these petitions

Vs.

The Assistant Commissioner (ST)-1,
Commercial Tax Building,
Dindigul. .. Respondents in all these petitions.

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in TIN 33905200300/2011-12, TIN 33905200300/2012-13 and TIN 33905200300/2013-14, respectively dated 28.03.2018, issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment orders afresh, after considering the representation, dated 23.01.2018 and 09.03.2018.

For Petitioner in all the petitions : Mr.N.Sudalaimuthu for Mr.S.Karunakar

For Respondent in all the petitions : Mr.R.Murugan, Additional Government Pleader

COMMON ORDER

These writ petitions have been filed by the petitioner challenging the revised assessment orders, dated 28.03.2018, passed by the respondent for the assessment years 2011-12, 2012-13 and 2013-14.

2. Since the issue involved in these writ petitions are one and the same, these writ petitions were heard together and are disposed of by way of this common order.

3. The petitioner is a manufacturer of yarn and registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Pursuant to the VAT Audit conducted on 10.02.2015 and 16.03.2015, the respondent had issued notices, dated 24.11.2017, pointing out certain defects, for which the petitioner had submitted his reply on 18.01.2018. After receipt of the said reply, the respondent issued another notices, dated 12.02.2018, alleging difference in purchase turnover. The petitioner has sent his reply stating that there was no variation in the purchase turnover reported in the monthly returns as well as profit and loss account. But the respondent, without independent application of mind on the petitioner's objections in proper perspective and without any valid reason, has passed the impugned orders dated 28.03.2018. Challenging the said orders, the petitioner has filed these Writ Petitions.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the records carefully.

5. The main ground on which the petitioner sought to quash the impugned orders is that respondent, without any independent application of mind on the petitioner's objections and without any valid reason, has simply confirmed the proposal, by the impugned orders dated 28.03.2018. As rightly stated by the learned counsel for the petitioner, it is seen that in the impugned orders, while confirming the proposal, the respondent had simply stated that the petitioner had not explained the actual purchase difference between the reported purchase turnover and as per the profit and loss accounts of the dealer and that the dealer's reply of the profit and loss account shows net consumption of raw materials is not acceptable. The respondent has further stated that “in the case of invisible loss, the dealer have already been accepted the defect at the time of vat audit itself. The tax due on such ITC reversal has been paid by the way of cheque at the time of vat audit. Now the objections filed by the dealer are not acceptable. Hence, the dealer's reply, in this regard, is over-ruled and tax due on such ITC reversal due to invisible loss is hereby confirmed.” The respondent ought not to have rejected the claim of the petitioner, without any valid reason, by simply stating that the dealer had accepted the defect at the time of VAT Audit and paid cheque. It clearly shows that the Assessing Officer, without independently applying his mind, solely guided by external factors and in particular, the VAT Audit report, has passed the impugned orders.

6. In the decision in **Madras Granites (P) Ltd., Vs. C.T.O., Arisipalayam Circle ((2006) 146 STC 642)**, a Division Bench of this

Court has clearly stated the manner in which the Assessing Officer has to function. The relevant portion is extracted hereunder:

> "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. However, it is found that in both the matters, the Assessing Officer has acted on the basis of the directions of the higher authority in completing the assessment. We hold that the assessments are not sustainable in law."

7. In the decision in **Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri**, reported in **(2015) 81 VST 560**, a learned Single Judge of this Court has held as follows:

> "10.At the risk of repetition, this Court states that the Assessing Officer, under the Act, has been conferred powers to independently consider the matter, and, at best, the information furnished by the Enforcement Wing, or Inspecting Officer, could be considered to be in the nature of a first information, and based on such information, if the Assessing Officer proposes to issue a show cause notice, then he is required to call for explanation from the dealer, and then, it is incumbent upon the Assessing Officer to give his/her own independent reasons, and to pass orders, either accepting the case of the dealer, or rejecting it. However, this basic principle, as to how the assessment has to be made, has not been followed in the instant cases, and since the assessment has been made by the respondent / Assessing Officer, blindly accepting the proposal sent by the Deputy Commissioner (CT Enforcement South, the impugned orders have to be held to be not sustainable, calling for interference."

8. As stated in the above decisions, in this case also, the respondent has without any independent application of mind and without any valid reason, has passed the impugned orders and hence, they are liable to be set aside and accordingly, the impugned orders are set aside and the matter is remanded back to the file of the respondent, who shall independently consider the petitioner's objections, without being in any manner influenced by the Audit report and after providing an opportunity of personal hearing to the petitioner, shall pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

9. These Writ Petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS-I)

To
The Assistant Commissioner (ST)-1,
Commercial Tax Building,
Dindigul.

+2 CC To MR.S.KARUNAKAR, Advocate SR. NO. 81861 & 81862

Common Order made in
W.P(MD)Nos.11958 to 11960 of 2018
03.09.2018

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TR/SV/SAR-I(11.10.2018)4P 4C