BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)No.8658 of 2014
and
M.P(MD)No.1 of 2014 and W.M.P(MD)No.13096 of 2018
AND
W.P(MD)No.9312 of 2014
and
M.P(MD)No.1 of 2014

W.P(MD)No.8658 of 2014:

M/s.Manickam Enterprises,
represented by its
Partner,
123-L, Katchery Road,
Virudhunagar. ... Petitioner

Vs.

The Commercial Tax Officer – I,
Virudhunagar Assessment Circle,
Virudhunagar. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the respondent in his proceedings in TNGST No.5720855/2006-07 and quash the pre-revision notice dated 28.04.2014 issued therein.

For Petitioner : Mr.R.L.Ramani
Senior Counsel
for Mr.S.Raja Jeya Chandra Paul

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

W.P(MD)No.9312 of 2014:

M/s.Manickam Enterprises,
represented by its
Partner,
123-L, Katchery Road,
Virudhunagar. ... Petitioner

Vs.

The Commercial Tax Officer – I,
Virudhunagar Assessment Circle,

Virudhunagar. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the respondent in his proceedings in TNGST No.5720855/2006-07 and quash the assessment order dated 30.05.2014 passed therein.

For Petitioner : Mr.R.L.Ramani
Senior Counsel
for Mr.S.Raja Jeya Chandra Paul

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

COMMON ORDER

The petitioner in these writ petitions is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 [in short 'TNGST Act'] as well as the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act']. He challenged the pre-revision notice dated 28.04.2014 in W.P(MD)No.8658 of 2014 on the ground that there is no limitation specified under Section 87-A of the TNVAT Act as compared to Section 12-C of the TNGST Act. In W.P(MD)No.9312 of 2014, the challenge is to the assessment order passed by the respondent.

2. As stated above, the impugned pre-revision notice dated 28.04.2014 was challenged by the petitioner on 02.06.2014. In the meanwhile, he sent a reply to the pre-revision notice dated 28.04.2014 to the respondent seeking fifteen days time for the purpose of collecting details with respect to the case pending before this Court and also to complete the Income Tax assessment for the year 2013-14 and particulars from the system for the year 2006.

3. However, the Assessing Officer without accepting or rejecting the request of the petitioner, proceeded to pass final orders in his proceedings in TNGST No.5720855/2006-07, dated 30.05.2014. Thereafter, the writ petition filed by the petitioner in W.P(MD)No.8658 of 2014, challenging the pre-revision notice was admitted and interim stay was granted on 03.06.2014. Simultaneously, the impugned assessment order passed by the respondent was also dispatched and reached the petitioner on 07.06.2014. Challenging the assessment order, the petitioner preferred the writ petition in W.P (MD)No.9312 of 2014.

4. The respondent has filed a detailed counter setting out the very same reasons stated in the impugned assessment order that the reasons stated by the petitioner were not believable and therefore, they were rejected and therefore, final orders were passed.

5. I have heard the rival contentions.

6. The admitted facts are that the pre-revision notice was issued on 28.04.2014 and the petitioner submitted a letter dated

22.05.2014 requesting fifteen days' time for the purpose of filing his objections. The reasons stated therein were that he had to collect certain details with respect to pending case before this Court; to complete the Income Tax returns for the year 2013-14 and to gather particulars from the system for the assessment year 2006-07.

7. The pre-revision notice was issued with regard to the assessment year 2006-07. It is well settled that whenever a request is made for adjournment, the Assessing Officer shall consider and grant time enabling the dealer to file his objections. Pursuant to the recommendations issued by the Committee headed by the Honourable Mr.Justice G.Ramanujam, the Commissioner of Commercial Taxes issued instructions. As per the said instructions, with regard to the adjournment for filing objections is concerned, a direction is issued to the Assessing Officers to be flexible in granting time for the same. Any instruction given by superior officer is binding on them and they have to follow the instructions unless the extraordinary circumstances show that it cannot be adopted in the particular facts and circumstances of the case.

8. In the instant case, pre-revision notice was issued on 28.04.2014 and the same was received by the petitioner only on 09.05.2014. He has sought for time on 22.05.2014.

9. It is not the case of the respondent that the dealer has sought for time repeatedly with an ulterior motive to drag on the proceedings. Even at the first instance, when a request is made, the Assessing Officer shall not construe the same for the purpose of delaying the proceedings. The observations made by the Assessing Officer in the impugned order do not appear to be fair and reasonable. The Assessing Officer presumed without any basis, that the petitioner wanted to drag on the proceedings even at the first request for extension of time.

10. Be that as it may, when a request is made seeking time for filing objections, it is incumbent on the Assessing Officer to communicate as to whether he accepts or rejects it. If he accepts the request seeking extension of time, the date fixed for further hearing or extension of time given shall be intimated to the dealer. If the request is not granted, the rejection should also be communicated to the dealer concerned and he shall proceed to take appropriate steps for further hearings.

11. In the instant case, the respondent has not communicated his decision to reject the request of the petitioner. On the other hand, he had proceeded to pass final orders on the ground that the request made by the petitioner was not bona fide.

12. The Honourable Division Bench of this Court in W.P.Nos.8766 to 8768 of 2000, had categorically held that failure to communicate the decision taken on a request for extension will vitiate the order

itself. In the present case also, the Assessing Officer has failed to communicate his decision of rejecting the request for extension of time. Therefore, the order passed by the Assessing Officer is not sustainable and it is to be construed as it is violative of principles of natural justice.

13. In the result,

(i) W.P(MD)No.9312 of 2014 is allowed and the impugned assessment order in TNGST No.5720855/2006-07, dated 30.05.2014, is set aside and the matter is remanded back to the respondent for fresh consideration. Since the petitioner has taken a ground of limitation in view of Section 87-A of the TNVAT Act and Section 12-C of the TNGST Act, the petitioner is directed to file all his objections with regard to Section 87-A of the TNVAT Act and Section 12-C of the TNGST Act within a period of fifteen days from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the objections of the petitioner and pass orders on merits after affording an opportunity of personal hearing to the petitioner within a period of four weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

(ii) In the light of the order passed in W.P(MD)No.9312 of 2014, the writ petition in W.P(MD)No.8658 of 2014 is disposed of. No costs. Consequently, M.P(MD)No.1 of 2014 and W.M.P(MD)No.13096 of 2018 are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-II)

To
The Commercial Tax Officer – I,
Virudhunagar Assessment Circle,
Virudhunagar.
+1CC TO MR.S.RAJA JEYA CHANDRA PAUL, ADVOCATE IN SR.No.73420.
+1CCs TO SPECIAL GOVERNMENT PLEADER IN S.R.No.73514,73515.

RSB
DS RSK SAR-2:11.09.2018: 4P/4C

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and
M.P(MD)No.1 of 2014 and
W.M.P(MD)No.13096 of 2018
AND
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