BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.04.2018
CORAM
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.6051 of 2017
and
W.M.P.(MD)Nos.4779 and 4780 of 2017
&
W.P.(MD)No.18139 of 2017
and
W.M.P.(MD)Nos.14603 and 14604 of 2017

M/s.Vedanta Limited,
(earlier known as M/s.Sesa Sterlite Ltd.,)
Represented by General Manager (Indirect Taxes),
SIPCOT Industrial Complex,
Madurai Bye-pass Road,
T.V.Puram P.O.,
Tuticorin - 628 002.` ... Petitioner in both W.P.s

-Vs-

1. The Assistant Commissioner,
   Circle III, Commercial Tax,
   New Commercial Building,
   Beach Road, Tuticorin - 628 001.

2. The Deputy Commissioner (SMR),
   Ezhilagam, Chepauk, Chennai - 600 005.

3. The Principal Secretary & Commissioner
   of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai - 600 005.

4. The Joint Commissioner (Enforcement),
   Commercial Tax Building,
   A.R.Line Road, Palayamkottai,
   Tirunelveli - 626 002. ...Respondents in both W.P.s

Prayer in W.P.(MD)No.6051 of 2017: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders passed in CST 473403/07-08 dated 14.03.2017 on the file of the 1st respondent and quash the same as arbitrary, illegal and unconstitutional and consequently direct the 1st respondent to pass appropriate orders after examining the records submitted, in accordance with law.

Prayer in W.P.(MD)No.18139 of 2017: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders passed in CST 473403/08-09 dated 31.08.2017 on the file of the 1st respondent and quash the same as arbitrary, illegal and unconstitutional and remand the matter back for fresh assessment and determination by a new set of officers.

For Petitioner : Mr.P.S.Raman
Senior Counsel for
Mr.R.Parthasarathy

For Respondents : Mr.J.Padmavathi Devi
Special Government Pleader
(in both W.P.s)

COMMON ORDER

The petitioner is an assessee under the respondent. For the assessment year 2007-08, there were certain defects found by the respondents. Pursuant to the surprise inspection conducted by the Enforcement Wing, pre-revision notices were issued and the petitioner filed their objections. After considering the objections, the assessing authority has passed the final order in his proceedings in CST 473403/07-08 dated 14.03.2017 and CST 473403/08-09 dated 31.08.2017. The said orders were challenged before this Court in the present writ petitions.

2. This Court, while admitting the matter, passed an interim order in W.M.P.(MD)No.4779 of 2017 in W.P.(MD)No.6051 of 2017 dated 06.04.2017, wherein paragraph Nos.3 and 4 has observed as follows:

> "*3.In the course of the argument, learned senior counsel for the petitioner submitted that the petitioner has produced records and several files of lorry receipts to satisfy the authorities that they are the proof for transporting the goods for effecting sale outside the State in terms of Section 70(1)(b) of Tamilnadu Value Added Tax, 2006. However, Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents submitted that so far they have not produced any lorry receipts with the official seal of the last check-post at this stage. However, the learned senior counsel produced before this Court a file containing hundreds of receipts with seal and submitted that several such files produced by the petitioner were not considered on the ground that the computer generated records from the check-post do not tally with the receipts.*
>
> *4. This Court is of the view that before passing further orders, it is necessary for this Court to satisfy itself whether the petitioner/assessee has produced the records to show that they have not sold any goods within the State and transported the goods to sell them outside the State. Hence, the assessee is directed to produce the records, namely, the*

lorry receipts and connected records so that the assessing Authority will be in a position to verify whether the assessee has proved the transportation of goods outside the State without any sale within the state. The assessee is also directed to produce necessary records which may prove that the entire goods manufactured by the assessee, has suffered tax for the first sale in other states. The assessee is given two weeks time to produce the records to the assessing Authority who shall consider the records in the presence of a representative of the assessee and make his remarks on every such document that is made available to the assessing Authority. The assessing Authority is directed to submit his remarks and findings on the records submitted by the assessee pursuant to this direction within a period of six weeks from the date of receipt of the documents from the petitioner/assessee. Post the matter for final hearing on 18.06.2017."

3. Pursuant to the directions issued by this Court, the respondent issued a notice dated 11.04.2017 directing the petitioner to produce the original lorry receipts and invoices relating to stock transfer for the year 2007-08 within 7 days from the date of receipt of the notice. The petitioner also submitted 103 books containing original lorry receipts, invoices copies for verification on returnable basis for the period of 2007-08 with a covering letter dated 13.04.2017. This was followed by another letter dated 02.05.2017, wherein the petitioner has submitted additional documents consisting of 339 spring files, 16 box files containing 50,560 pages copy of silvassa first sale Excise invoices, Commercial invoice with lorry receipt evidencing tax suffered in the other State. This letter was received by the respondent on 02.05.2017. Further, the petitioner submitted a letter dated 06.06.2017 requesting an opportunity to explain the records in person. Thereafter, as directed by this Court, the respondent has submitted a verification report on stock transfer. From the verification report, it is noted that out of 138 bound volume books produced by the petitioner, 35 bound volume books were drenched in water and not inaccessible condition. Saying so, the respondents said to have arrived at a conclusion that 2884 invoices accounting for an amount of Rs.707,08,02,860/- were not endorsed by checkpost and that interstate transaction in respect of the above case had never happened. Therefore, the proposal to assess the stock transfer was given as detailed below:

"1.Turnover from defective invoices in 103 bound volumes of books Rs.707,08,02,860/-
2.Turnover proposed for 35 inaccessable bound volumes Rs.240,27,00,000/-
3.Total ineligible Stock Transfer Proposed Rs.947,35,02,860/- @ 5%
4.Tax due Proposed Rs.47,36,75,143/-"

4. By considering the above materials, which were placed before this Court, it is very clear that the respondents have not considered all the documents. It is also humanly impossible to consider all the 50560 invoices within a short span. It is also found that 35 bound volume books were drenched in water and there is no reference to the same in assessment files. The request for personal hearing to explain the records was also not given to the petitioner.

5. Considering the entire issue, this Court is of the considered view that the petitioner shall be given an opportunity of personal hearing to explain the details of all these documents. The respondent should pass order in compliance with principles of natural justice recording the reasons for arriving at his conclusion.

6. In view of the above observations, the impugned orders dated 14.03.2017 and 31.08.2017 passed by the respondent are set aside. The petitioner is directed to re-submit the copies of 35 bound volume books, said to have been drenched in water, to the respondent within a period of one week from the date of receipt of a copy of this order. On such receipt, the respondent shall consider all these documents, as directed by this Court by way of interim order dated 06.04.2017 and afford an opportunity of personal hearing to the petitioner. Thereafter, the respondent shall pass final order recording his reasons within a period of two months thereafter.

7. In the result, this Writ Petitions are disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Assistant Commissioner,
   Circle III, Commercial Tax,
   New Commercial Building,
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   A.R.Line Road, Palayamkottai,
   Tirunelveli - 626 002.

+1cc to Mr.Y.Prakash, Advocate Sr.No.63928
+1cc to Mr.K.Prabhakaran, Advocate Sr.No.64559

SM

VB/SV/SAR2/14.06.2018/5P/7C

Common Order made in
W.P.(MD)No.6051 of 2017
&
W.P.(MD)No.18139 of 2017
27.04.2018