IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Writ Petition Nos.2556, 2558, 2561 & 2562 of 2019
and
WMP. Nos.2831, 2834, 2835, 2836 of 2019

Tvl.Balu Spinning Mills Private Limited,
Represented by its Managing Director,
Tmt.B.Rajalakshmi,
No.14, Town Extension, Sheriff Colony,
Tirupur- 641 601. ... Petitioner in all WPs

-vs-

The Assistant Commissioenr (ST),
Bazaar Assessment Circle,
Tirupur. ... Respondent in all WPs

COMMON PRAYER: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the files of the respondent in ITN:33122421970/2011-12, 2012-13,2013-14, 2014-15 dated 08.11.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan in all WPs
For Respondent : Mr.M.Hariharan,
Additional Government Pleader in all WPs

C O M M O N   O R D E R

These Writ Petitions challenge orders of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'), for the periods 2011-12 to 2015-16.

2. The short ground on which the assessments are assailed is the abject lack of consideration of the detailed written submissions filed by the petitioner in response to the notice from the Departments amounting to gross violation of the principles of natural justice.

3. Mr.R.Senniappan, learned counsel appearing for the petitioner points out that notice dated 29.11.2016 has been issued by the Department, in response to which the petitioner filed an interim reply dated 23.12.2016. References were made to several judgments of the

jurisdictional High Court, that according to the petitioner, supported its case. Inter alia, the petitioner specifically sought an opportunity of personal hearing, in the event that the Assessing Authority was proposing not to accept the written reply of the petitioner at paragraph 4 thereof as follows:

> '4. Taking into consideration of the above facts and circumstances of the case, we request you to kindly drop your proposal in accordance with the principles laid down by the Honourable Madras High Court in the said judgments. We however request you to kindly furnish copy of the VSI-3 report dated 22.7.2016 and copies of the certificate of cancellation of the selling dealers for our final reply in this regard. We once again make it very clear that if any order is being passed as proposed without furnishing copies of records as requested for and opportunity of personal hearing, such order cannot be said to be valid in the eye of law, but deserves to be set aside by the Court of Law as being contrary to the principles of natural justice. We further request you to kindly inform the date on which we should come to your good office for collection of copies of records as requested for and thereafter grant us 15 days time to file our objection to your proposal notice dated 29.11.2016.'

4. As sought for by the petitioner, the VSI-3 proposals had been forwarded under cover letter dated 22.07.2016 in response to which the petitioner filed objection seeking further records from the respondent dated 16.08.2018. The records sought for were supplied under cover of communication dated 28.09.2018.

5. The petitioner thereafter, vide letter dated 10.10.2018, sought time till 31.10.2018 to make its submissions as the lawyer engaged, was not in station.

6. Despite the specific request made by the petitioner the impugned order has been passed on 08.11.2018. The entire operative portion of the order reads as follows:

> "Accordingly a notice was issued to the dealers on 29.11.2016 inviting their objections if any against the notice. In response notice the dealers have requested to furnish copy of the VSI 3 proposals and copies of the certificate of cancellation of the selling dealers for their final reply. Based the dealers request the VSI 3 proposal copy and details of cancel dealer online copies were given to the dealer on 17.05.2018. The dealer requested the copy of D7 records in 5th

cited letter. Based on the dealer request d7 records copy issued to the dealer on 28.09.2018. The dealer requested the time up to 31.10.2018 in reference 7th cited letter. But the dealer has not filed any objection till date. Hence the proposals already made confirmed and orders passed accordingly. It is here by ordered to recover the following tax due"

7. The assessment proposals have been confirmed without even a pretense of a discussion and the findings of the Enforcement wing of the Department have been simply adopted in toto. There has been no independent application of mind, to the issues that arisen, that has been held to be a mandatory requirement in the finalization of an assessment. Moreover, the personal hearing, as sought for by the petitioner on 10.10.2018 has clearly been denied. A catena of decisions of this Court including in the case of Tvl.SRC Projects Prviate Limited V. The Commissioner of Customs Tax in WA. Nos.893 & 894 of 2008 dated 08.09.2008 and others, support the view that where an opportunity of personal hearing has been sought, the same should be granted in order to ensure that the proceedings of assessment are fair and reasonable.

8. In the light of the discussion as aforesaid, the orders of assessment dated 08.11.2018 are set aside. The petitioner will appear before the respondent at the first instance on 07.03.2019 at 10.30 am alongwith its written objections to the proposals and any other materials that it may rely upon in support of its stand. The proceedings for assessment in relation to Assessment Years 2011-12 to 2014-15 shall be completed within a period of six (6) weeks from the date of conclusion of personal hearing.

9. These Writ Petitions are disposed of in the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rkp
To
The Assistant Commissioenr (ST),
Bazaar Assessment Circle,Tirupur.

+1cc to Mr.R.Senniappan , Advocate SR.No. 14395
Writ Petition Nos.2556, 2558, 2561 & 2562 of 2019
and WMP. Nos.2831, 2834, 2835, 2836 of 2019
A.SK(15/04/2019)