IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
Writ Petition Nos.5306 of 2009 and 2589 to 2591 of 2010
and M.P.Nos.2,2 and 2 of 2010

M/s.Pollachi Sarvodaya Sangh
rep. by its Secretary V.P.Anandan
Valparai Main Road
Rangasamudram,
Pollachi. : Petitioner in W.P.No.5306 of 2009

M/s.Sree Saravana Traders,
Rep. By its Partner - N.Vadivel,
No.628-A, Fort Main Road,
Shevapet,
Salem - 636 002. : Petitioner in W.P.No.2589 to 2591 of 2010

vs

The Special Committee
Office of the Commercial Tax Department
Ezhilagam, Chepauk, Chennai.
..... 1st respondent in the above W.Ps.

The Deputy Commercial Tax Officer
Pollachi (Rural) Pollachi.
.... 2nd Respondent in W.P.No.5306 of 2009

The Assistant Commissioner (CT),
Shevapet North Circle,
Salem. ... 2nd Respondent in W.P.No.2589 to 2591 of 2010

Petitions under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records on the file of the 1st Respondent in his order in SCP No.113/08/M3/27701/2007 dated 13.1.2009, SCP No.24/09-M1/26803/2009, SCP No.22/09-M1/26801/2009 and SCP No.23/09-M1/26802/2009 dated 05.10.2009 quash the same and further direct the 1st Respondent to pass order afresh by reconsidering the petition filed by the petitioner under section 16-D of the TNGST Act 1959 dated 10.5.2007 & 06.07.2009

For Petitioner : Mr.S.Rajasekar in all WPs.
For Respondents : Mr.V.Haribabu,
Additional Government Pleader in all WPs.

C O M M O N   O R D E R

These Writ Petitions challenge orders passed by the Special Committee constituted in terms of Section 16-D of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'). The flaw therein is apparent on a plain reading of the impugned orders, relating to the periods 2001-02, 2003-04, 2004-05 and 2005-06. After extracting verbatim the application filed by the petitioner, the Special Committee at paragraph 8 of order dated 13.01.2009 (for the period 2001-02) concludes as follows:

> 'The written submissions given in the application were carefully examined in detail by this Committee along with the connected records with the following facts:
>
> The petitioner was given opportunity to file their objections in their letter dated 8.12.04 received on 9.12.04. The final order was passed only on 31.3.05. hence the petitioner was given sufficient time. There is no violation of Principles of natural justice and Act and Rules. Hence, the application is rejected.'

2. Likewise, in relation to the remaining three years, the Special Committee, by order dated 05.10.2009 concludes the matter adverse to the petitioner as follows:

> 'The written submissions given in the application were carefully examined in detail by this Committee along with the connected records with the following facts:
>
> Pre-revision notice has been issued and served on 22.6.2007. The dealers have filed reply on 6.7.2007 and on 17.7.2007.
>
> As per the Orders of Hon'ble High Court Madras in W.P. No.26465/2007, Dated: 22.8.2007, a copy of D7 Slip No.28 recovered during inspection was handed over to the dealer on 17.10.2007. The dealer had further replied on 25.10.2007 and 27.12.2007.
>
> As per the directions of the Hon'ble High Court, Madras in the order above, the Assessing Officer has considered the objections file by the dealer on merits and passed revision order on 31.3.2009. The revision order had been served on 10.4.2009. There is no violation of Principles of Natural Justice and Act and Rules.'

3. Evidently, the application filed by the petitioners cannot be disposed in such a cursory fashion. The provisions of Section 16-D of the Act set out the scope and powers of the Special committee in the following terms:

'Section 16-D. Constitution of Special Committee.- (1) The Government shall appoint a Special Committee consisting of:

(1) Secretary to Government, Commercial Taxes Department;

(2) Commissioner of Commercial Taxes; and

(3) Secretary to Government, Finance Department or his nominee.

Sec. 16-D(2) Notwithstanding anything contained in this Act, the Special Committee may, of its own motion or on application, call for and examine the records of the assessing authority in respect of any proceeding or order under subsection (2) or (3) of section 12 or sub-section (1) or (2) of section 16, if such proceeding or order passed in violation of the provisions of the Act or rules made thereunder or without following the principles of natural justice, set aside the said proceedings or order and direct the assessing authority to make a fresh assessment and pass fresh proceeding or order in such manner as may be directed:

Provided that such proceeding or order against which any appeal or writ is pending shall not be entertained under this sub-section.

Sec.16-D(3) The order passed under sub-section (2) shall be final. '

4. This contemplates that there is an effective adjudication upon the averments raised in the application, such that the Special Committee deals with both the merits of the matter as well as the allegation regarding the violation of principles of natural justice.

5. In the present case, the orders merely refer to the aspect of natural justice and make no reference to the merits at all. Even as far as violation of principles of natural justice is concerned, there is no examination of the contents in detail, but merely a conclusion without any application of mind or discussion.

6. Mr.Haribabu, learned Additional Government Pleader submits that the matter may be remanded back to be redone by the Special Committee. However, the assessment years involved are 2001-02, 2003-04, 2004-05 and 2005-06 and the impugned orders are dated 13.01.2009 and 05.10.2009, more than a decade ago. In such circumstances, I do not believe that it is necessary to extend yet another opportunity/innings to the Revenue to redo

the assessment, just for the asking. Such opportunity was available at the first instance, which has not been utilised in a proper or appropriate manner. Hence, the request to remand the matter back to be redone de novo is rejected.

7. The impugned orders are set aside and the Writ Petitions allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

sl

To

1.The Special Committee
Office of the Commercial Tax Department
Ezhilagam, Chepauk, Chennai.

2.The Deputy Commercial Tax Officer
Pollachi (Rural) Pollachi.

3.The Assistant Commissioner (CT),
Shevapet North Circle, Salem.

+2cc to Ms.R.Hemalatha, Advocate, SR.Nos.92339 & 92340.
+1cc to Government Pleader, SR.No.92206 & 92207.

Writ Petition Nos.5306 of 2009 and
2589 to 2591 of 2010
and M.P.Nos.2,2 and 2 of 2010

(CO)
CSR: 29/10/2020