IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.12715, 12719, 12723, 12725, 12727, 12731 & 12733 of 2019 & W.M.P.Nos.12942,12949,12946,12947,12944,12954 & 12950 of 2019

W.P.No.12715 of 2019

M/s.Five Star Mobiles
Rep.by its Proprietor Vishal Jain,
No.5, Big Bazaar Street, Near Palaniammal
School, Tirupur - 641 604. .... Petitioner

Vs

1.The State Tax Officer
Central- I Circle, Tirupur.

2.The Deputy Commercial Tax Officer(Addl)
South Circle, Tirupur.

3.The Commercial Tax Officer
Palladam Circle, Palladam. .... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in Ref.No.113/2016/2008-09 2009-2010,2010-,2011,2011-2012,2012-2013,2013-2014,2014-2015 respectively and to quash the impugned order dated 31.12.2018 as passed contrary to the provisions of the TNVAT Act and in violation of the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
For Respondents: Ms.G.Dhanamadhiri
Government Advocate



O R D E R

This common order will govern the aforesaid seven writ petitions. In other words, this common order will dispose of all the seven writ petitions on hand.

2. Mr.P.Rajkumar learned counsel on record for the writ petitioner in all the seven writ petitions and Ms.Dhana Madhri, learned Government Advocate, on behalf of all the three respondents in all the seven writ petitions, are before this court.

3. These seven writ petitions are listed under the caption 'ADJOURNED ADMISSION'. However, with the consent of both the learned counsel, the main writ petitions itself are taken up, heard out and are being disposed of.

4. Be that as it may. It is submitted by the learned counsel on both sides ie., learned counsel for the writ petitioner as well as the learned counsel for the Revenue without any disputation or disagreement that all the seven writ petitions pertain to common factual matrix and trajectory thus far which has brought these matters to this Court. It is also the further common submission of both the learned counsel made in unison that the core and central issue in all these writ petitions are one and the same.

5. With the aforesaid prefatory note, this Court proceeds to deal with the necessary facts.

6. Considering the narrow compass, in which the instant writ petitions now turn, more particularly in the light of the trajectory, which the hearing has taken today, suffice to set out short facts shorn of unnecessary particulars and details. The short facts are:

a. The writ petitioner assessee is running a shop dealing with mobile phones. It is the writ petitioner's say that the writ petitioner is dealing with buying and selling of old mobile phones.

b. It is also further stated by the the writ petitioner that writ petitioner's annual turn over is below Rs.5,00,000/- (Rupees Five Lakhs only) and therefore, the writ petitioner is an unregistered dealer.

c. All the writ petitions arise under 'Tamil Nadu Value Added Tax Act 2006' ('TNVAT Act' for brevity). As already mentioned supra, there is no disputation between both sides that all the writ petitions arise out of common facts and the central / core issue in all these seven writ petitions is one and the same. The assessment years and the numerical values alone are different. The seven assessment years, which form subject matter of this common order are 2008-09 to 2014-15.

d. There was a surprise inspection of writ petitioner's place of business by the enforcement wing officials of the respondent department on 25.09.2014. Certain records were taken away from the writ petitioner's shop and the enforcement wing made certain proposals for assessment and levy of tax under TNVAT Act qua the writ petitioner, inter alia on the ground of suppression of certain purchase details. To be noted, this proposal is also predicated on probable omission.

e. Based on the aforesaid proposal of the enforcement wing, the first respondent issued notice to the writ petitioner assessee and called upon the writ petitioner assessee to produce documents and other evidence that may be necessary to decide the matter.

f. Admittedly the writ petitioner did not avail of this opportunity.

g. Thereafter, the first respondent passed seven different orders of assessment of all dated 31.12.2018. The instant writ petitions have been filed assailing the aforesaid seven separate assessment orders dated 31.12.2018.

7. The primary and pivotal submission made by learned counsel for writ petitioner is that a perusal of the impugned assessment orders made by the first respondent, would reveal that the first respondent has not made any independent assessment and the first respondent has merely accepted the proposal given by the enforcement wing.

8. Adverting to the impugned orders, learned counsel for the writ petitioner submitted that a perusal of the same reveals that, the first respondent has merely gone by the proposal given by the enforcement wing without even adducing reasons as to how and why the first respondent has accepted the proposal given by the enforcement wing.

9. Responding to the aforesaid submission, learned counsel for the Revenue pointed out that the writ petitioner assessee has not availed of the opportunity given to the writ petitioner for filing documentary evidence. It was also pointed out that the writ petitioner has not availed of the opportunity of personal hearing ie., appearing in person and producing documents. Not having done so, the writ petitioner cannot now be heard to contend that the impugned order has been passed by merely accepting the order of the enforcement wing. It was also submitted by learned counsel for the Revenue that some objections have to be raised before the assessing authority to consider rival pleas so as to embark upon to exercise of the first respondent's quasi judicial function.

10. Be that as it may. Learned counsel for the petitioner pressed into service before this Court order made by a learned Single Judge of this Court in Narasus Roller

Flour Mills -Vs- The Commercial Tax Officer reported in (2015) 81 VST 560 (Mad).

11. Adverting to the aforesaid Narasu's principle, learned counsel for the writ petitioner submitted that honourable Single Judge of this Court, following the Division Bench judgment of this Court, in Madras Granites (P) Ltd., -Vs- Commercial Tax Officer, Arisipalayam Circle, Salem and another reported in (2006) 146 STC 642 (Mad), had held that the assessing officer cannot be guided solely by the proposal given by the investigating officer, without independent application of mind. It has also been laid down as part of Narasu's principle that the duties enshrined on the assessing officer under the provisions of the TNVAT Act would cast responsibility on the assessing officer to independently apply his / her mind and make an assessments.

12. The most relevant paragraphs, wherein this aspect of the matter was articulated in Narasus Roller Flour Mills -Vs- The Commercial Tax Officer reported in (2015) 81 VST 560 (Mad), reads as follows :

> "5.After considering the entire facts placed before this Court, this Court is fully convinced that the Assessing Officer has clearly abdicated his quasi-judicial power. The Honourable Division Bench of this Court, in the case of Madras Granites Pvt.Ltd. Vs.Commercial Tax Officer, Arisipalayam Circle, Salem and another reported in (2006) 164 STC 642, considered the question as to the manner in which the Assessing Officer has to proceed with the assessment even though reopening of the assessment was pursuant to a proposal submitted in Form D3 by the Inspecting Officer. The Honourable Division Bench pointed out 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, the same are not sustainable in law.
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> 6.The above decision of the Honourable Division Bench of this Court is squarely applicable to the facts of the petitioner's case. The Assessing Officer has been solely guided by the proposal given by the Inspecting Officer, thereby, there was no independent application of mind and duties enshrined on the Assessing Officer under the provisions of the Act have been given a go-by. Further, when the representations were made by the petitioner stating that the records which are produced had to be taken back for want of time and they are willing to produce the records, the

> Assessing Officer should have afforded an opportunity to the petitioner to produce their records and it is erroneous on the part of the Assessing Officer to have come to the conclusion that the claim made by the petitioner stating that they are having all original bills and the same may be verified and further action dropped is only an after thought. Furthermore, the observation that personal hearing need not be granted is perverse as it is contrary to the provisions of the Statute and contrary to the settled legal principles."

13. There is one more important aspect, which has been projected by learned counsel for the Revenue. Narasu's judgment cited supra is a case where the assessee has filed objections, whereas in the instant case, the writ petitioner has not filed any objections and he has not chosen to produce documents before the first respondent, though an opportunity was given to the writ petitioner in this regard.

14. This takes us to the question whether an assessee, who has not availed of the opportunity given by the assessing officer can fall back on Narasu's principle and assail the assessment orders.

15. In the instant case, this Court is of the considered view that the benefit of Narasu's principle will be available to the writ petitioner for a different reason. That different reason is that, a perusal of the seven impugned orders reveal that it is very cryptic and there is no discussion. There is no elaboration whatsoever as to why the assessing authority has accepted the proposal given by the enforcement wing. In other words, there is nothing in the impugned assessment orders to show what weighed the mind of the assessing officer to accept the proposal given by the enforcement wing. In the absence of such discussion, it follows as an inevitable sequitur that there is nothing in the impugned orders to say that the first respondent has applied his / her mind independently ie., independent of the proposal of the enforcement wing. Without embarking upon the exercise of ascertaining whether the first respondent has applied his / her mind independent of the proposal given by the enforcement wing, suffice to say that nothing has been recorded in the impugned assessment orders to show that there is independent application of mind qua proposal given by enforcement wing.

16. Therefore, the question as to whether the writ petitioner assessee, who has chosen not to file objections and chosen not to avail the opportunity to object given by the assessing authority, will be entitled to press into service the Narasu's principle, is left open.

17. Leaving the above question open, in the light of peculiar facts and circumstances of this case and in the light of the cryptic impugned orders, the details of which have been alluded to supra, this Court passes the following order :

(a) The seven impugned orders bearing Ref.Nos.113/2016/2008-09, 113/2016/2009-10, No.113/2016/2010-11, No.113/2016/2011-12, No.113/2016/2012-13, No.113/2016/2013-14 and No.113/2016/2014-15 dated 31.12.2018, are set aside on the sole ground of not making assessment independent of the proposal of the enforcement wing / not giving reasons for accepting enforcement wing proposal.

(b) As a corollary to the previous paragraph, it is made clear that this Court does not express any opinion on the merits of the assessment orders.

(c) The first respondent shall issue notice under due acknowledgement afresh to the writ petitioner, within a fortnight from the date of receipt of a copy of this order, calling upon the writ petitioner to submit objections with supporting documents. The first respondent shall also give personal hearing to the writ petitioner.

(d) Thereafter, the first respondent shall redo the assessments for all the seven years in accordance with law and more particularly in accordance with Narasu's principle adverted to supra.

(e) If the writ petitioner does not avail of the opportunity in pursuance to this order also, it will be open to the first respondent to redo the assessment, without the objections albeit in accordance with Narasu's principle.

(f) The aforesaid exercise shall be completed by the first respondent within eight weeks from the date of the personal hearing, which shall be accorded to the writ petitioner within the aforesaid time frame.

(g) The assessment order, after being redone shall be served on the writ petitioner under due acknowlegement in a manner known to law, in accordance with the applicable to the rules under the TNVAT Act.

18. Before parting with this case, it is necessary to observe that the writ petitioner has been described as M/s.Five Star Mobiles. The prefix 'M/s' is used for a partnership firm, which is a compendious name for all the partners. If it is a partnership firm, the question whether a writ petition under Article 226 of the Constitution of

India, at the instance of a partnership firm is maintainable, has already been left open by this Court in other cases.

19. Be that as it may. On instructions,this Court is informed that the writ petitioner is one Mr.Vishal Jain, carrying on business in the name and style of Five Star Mobiles, as sole proprietor. Therefore, in this case, reference to the writ petitioner shall be reference to the natural person Mr.Vishal Jain, who is carrying on business as sole proprietor in the name and style as Five Star Mobiles at No.5, Big Bazaar Street, Near Palaniammal School, Tirupur - 641 604.

20. These writ petitions are disposed of with the above directions. However, there shall be no order as to the costs. All the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KST
To

1.The State Tax Officer
Central- I Circle, Tirupur.

2.The Deputy Commercial Tax Officer(Addl)
South Circle, Tirupur.

3.The Commercial Tax Officer
Palladam Circle, Palladam.

+1cc to Mr. P.Rajkumar, Advocate SR.No. 47422
W.P.Nos.12715, 12719, 12723, 12725, 12727, 12731 & 12733 of 2019

kk (CO)
A.SK(10/07/2019)