BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2019

CORAM :

**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.4423 to 4427 of 2019
and
M.P.(MD)No.3528 and 3532 of 2009

M/s.Crafts India,
Represented by its Partner P.K.Bhaaskaran,
No.9D/6D, Ramakrishnapuram East 3rd Street,
Karur. ... Petitioner in all petitions

/Vs./

The Commercial Tax Officer,
Karur (East) Assessment Circle,
Commercial Taxes Building,
Karur. ... Respondent in all petitions

Common Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in TIN 33863762103/2011-12, 2012-13, 2013-14, 2014-15, 2015-16 dated 19.12.2018 issued by the respondent and quash the same as arbitrary, illegal, without jurisdiction and against the principles of natural justice.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.M.Jeyakumar
Additional Government Pleader
(In all petitions)

**COMMON ORDER**

These batch of writ petitions have been filed challenging the impugned assessment orders for the years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16. Since the grounds raised in all these writ petitions are one and the same, they have been disposed of by a common order.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as “the TNVAT Act”]. According to them, they have been filing the monthly returns with the respondent on the due dates and have been paying the tax regularly and the monthly returns have also been accepted by the respondent under Section 22 (2) of the TNVAT Act, 2006. For the aforesaid assessment years, the respondent proposed to revise

the assessment by issuing pre-revision notices dated 24.01.2018 on the following grounds:

(a) On verification of the Profit and Loss account and the monthly returns, it was found that there is a difference of purchase omission for which deemed sales value has been arrived.

(b) On verification of the monthly returns along with Trading, Profit & Loss account and Form WW, it was found that there was purchase omission committed by the petitioner.

(c) On verification of the monthly returns along with Trading, Profit & Loss account and Form WW, it was found that there was sales omission.

3. Detailed replies dated 08.02.2018 were sent by the petitioner to the pre-revision notices dated 24.01.2018, wherein they have categorically denied any sales or purchase suppression. Along with the replies, they have also enclosed the following documents:

(a) Copies of Annexure-1 and purchase invoices;

(b) Trading, Profit & Loss account for the assessment year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16;

(c) Statement for export sales with related records;

(d) copy of the revised returns and delivery acknowledgements.

The said replies along with the enclosures were duly acknowledged by the respondent as seen from the impugned assessment order.

4. According to the petitioner, the assessment orders are non speaking orders and the respondent has not considered the objections raised by the petitioner with supporting documents in replies dated 08.02.2018. According to the petitioner, in all the assessment orders, the respondent has not applied her mind independently, but instead, has blindly accepted the proposals made by the Enforcement Wing Officers of the respondent Department.

5. According to the petitioner, the respondent ought to have applied her mind independently uninfluenced by the higher official. In the instant case, originally the respondent was convinced that the fact of filing revised monthly returns and transactions were subjected to tax liability and properly accounted for without any omissions. Thereafter, she forwarded a deviation proposal to the higher authority. But the deviation proposal was rejected by the higher official and directed the respondent to pass an order, which according to the petitioner is impermissible in law.

6. According to the petitioner, the respondent has not applied her mind independently, while passing the impugned assessment orders, but has blindly accepted the directions given by the Deputy Commissioner [Enforcement], Trichy, her higher authority, by confirming the proposal for revision of assessment. In the aforesaid circumstances, the instant writ petitions have been filed.

7. A counter affidavit has also been filed, in which the respondent has stated that adequate opportunity was granted to the petitioner to raise all objections available to them under law. It is also their case that personal hearing was afforded to the petitioner in the revision of assessment proceedings. Therefore, according to them, the only remedy available to the petitioner is to file a statutory appeal under Section 51 of the TNVAT Act.

8. Heard Mr.S.Karunakar, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent.

9. This Court has perused and examined the impugned assessment orders. The petitioner had sent detailed replies dated 08.02.2018 to the pre-revision notices dated 24.01.2018 proposing to revise the assessment for the aforementioned assessment years. In the said replies, the petitioner has categorically denied any suppression of sales or purchase. They have also enclosed along with replies, the (a) Copies of Annexure-1 and purchase invoices; (b) Trading, Profit & Loss account for the assessment year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16; (c) Statement for export sales with related records; (d) copy of the revised returns and delivery acknowledgements.

10. Even though detailed replies were sent by the petitioner along with supporting documents denying their liability, the same has not been considered in the impugned assessment orders. In the impugned assessment orders, there is a reference to the letter of the Deputy Commissioner (ST), Karur, RC.No.2192/2018/A3 dated 27.07.2018, letter of the Assistant Commissioner (ST) (Enforcement), Karur, R.C.No.658/2018/B2 dated 10.09.2018 and the letter of the Deputy Commissioner (ST), (Enforcement), Trichy, R.C.No.2336/2018/B3 dated 14.09.2018 mentioned in Serial No.7,8 and 9 respectively.

11. It is the case of the petitioner that the respondent had recommended dropping of the proposal to revise the assessment to the Deputy Commissioner (Enforcement), Trichy and the Deputy Commissioner (Enforcement), Trichy, rejected the recommendation and it is also the case of the petitioner that the respondent has blindly accepted the directions of the Deputy Commissioner (Enforcement), Trichy, who is her higher official without taking an independent view of her own. Even though there is a reference to the letters mentioned in serial no.7,8 and 9 in the impugned assessment orders, there is no discussion about the same. Therefore, it can be construed that there was indeed a recommendation made by the respondent to her higher officials to drop the revision of assessment proceedings initiated against the petitioner.

12. It is well settled law that the respondent will have to independently pass an impugned order based on the materials available with her and not blindly follow the directions given by her superiors or follow the report of the Enforcement Wing Officials of her Department without any independent verification. In the instant case, as seen from the assessment orders, there is no discussion regarding the copies of documents enclosed by the petitioner along with their replies dated 08.02.2018, but instead the respondent has merely observed the following in the impugned assessment orders for all the assessment years.

> *"Accordingly, a notice was issued to the dealer inviting objection if any on the above proposal made. In response to the notice issued, the dealer have filed reply to the above defects pointed out, which were claimed and found that the contention raised could be accepted, as the defect pointed out only on the scrutiny of accounts during the course of field audit. Therefore, the proposal already made is hereby confirmed as ordered to be assessed."*

13. It is evident from the above that the impugned assessment orders are non speaking orders and there is total non application of mind by the respondent while passing those assessment orders.

14. For the foregoing reasons, this Court is of the considered view that the impugned assessment orders will have to be quashed.

15. In the result, the impugned assessment orders dated all 19.12.2018 for the assessment years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 are hereby quashed and the matters are remanded back to the respondent for fresh consideration and the respondent, after affording adequate opportunity to the petitioner including grating them the right of personal hearing, shall pass final orders, within a period of eight weeks from the date of receipt of a copy of this order.

16. With the aforesaid directions, the writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Commercial Tax Officer,
Karur (East) Assessment Circle,
Commercial Taxes Building,
Karur.

+1CC TO MR.S.KARUNAKAR, Advocate Sr. No.61575
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.61772

Common Order made in
W.P.(MD)No.4423 to 4427 of 2019
Dated: 22.04.2019

NS(CO)
TR (09.05.2019) 5P 4C