BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)Nos.5209 to 5212 of 2019
and
W.M.P.(MD)Nos.4161 to 4164 of 2019

Asian Building Materials Private Limited,
Represented by its Managing Director,
A.Mujibur Rahman,
No.13/A-1 G.H.Road,
Ramanathapuram. ... Petitioner in all Petitions

Vs.

The State Tax Officer,
Ramanathapuram. ... Respondent in all petitions

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent herein in TIN Nos.33335444520/ 2013-14, 33335444520/ 2014-15, 33335444520/ 2015-16 and 33335444520/ 2016-17, dated 08.02.2019, respectively, quashing the same.

For Petitioner : Mr.N.Inbarajan
(in all petitions)

For Respondent : Mr.M.Jeyakumar
(in all petitions) Additional Government Pleader

COMMON ORDER

Since the issue involved in these Writ Petitions are one and the same, all the Writ Petitions are disposed of by a common order.

2.The instant Writ Petitions have been filed challenging the assessment orders dated 08.02.2019 passed by the respondent in TIN Nos.33335444520/ 2013-14, 33335444520/ 2014-15, 33335444520/ 2015-16 and 33335444520/ 2016-17, respectively.

3.It is the case of the petitioner that they are a registered dealer under the Tamil Nadu Value Added Tax Act (TNVAT Act), 2006 [hereinafter referred to as 'the Act']. According to the petitioner, the returns filed for the assessment years, 2013-2014, 2014-2015, 2015-2016 and 2016-2017, were accepted by the respondent under Section 22(2) of the TNVAT Act, 2006.

4.It is the case of the petitioner that based on the report dated 25.01.2017 of the Enforcement Wing Officers of the respondent, the respondent initiated revision of assessment proceedings under Section 27(1) of the Act for the years 2013-14 to 2015-16 and under Section 22(4) of the Act, for the year 2016-17, by issuing a pre- revision notice. According to the petitioner, the entire revision of assessment was proposed to be made by the respondent based on the Enforcement Wing Officer's report dated 02.05.2017. It is the case of the petitioner that no verification was done by the respondent as an Assessing Authority, as defined under Section 2(5) of the Act.

5.According to the petitioner, it is a mandatory requirement for conducting an enquiry by the respondent and the respondent must be subjectively satisfied before passing the impugned assessment orders. Therefore, according to the petitioner, the respondent lacks jurisdiction for revision of assessment. It is the case of the petitioner that a detailed reply dated 19.12.2018 was sent by the petitioner to the pre-revision notice dated 02.05.2017, stating the aforesaid objections. It is the case of the petitioner that there was a delay in submitting the reply, since the details sought for by the petitioner were given by the respondent only on 08.11.2018, which was served on the petitioner on 13.11.2018.

6.It is also the case of the petitioner that the respondent has blindly accepted the inspection report without subjective satisfaction about the correctness of the report. It is the further case of the petitioner that no personal hearing was given to the petitioner before passing the final order. It is also the case of the petitioner, that despite several objections raised against the impugned assessment orders, the final orders have been passed without granting an opportunity of personal hearing to the petitioner, which is mandatory. In such circumstances, the Writ Petitions have been filed challenging the impugned assessment orders.

7.Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent.

8.As seen from the impugned assessment orders, the assessment of the total taxable turnover of the petitioner was done by the respondent only for a period of nine months under Section 22(2) of the TNVAT Act, 2006. The assessment will have to be done for the whole year. Section 22(2) of the TNVAT Act, 2006 reads as follows:-

"...**Section 22.[Deemed assessment and procedure to**

be followed by assessing authority].-

(2)The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assess for the year on the 31st day of October of the succeeding order:

Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011, on which assessment orders are not passed shall be deemed to have been assessed on the 30th day of June 2012..."

9.In the instant case, the Enforcement Wing Officers of the respondent filed the report dated 25.01.2017, wherein it is stated that they have inspected the business premises of the petitioner. The stock report submitted by the petitioner for the period from 01.04.2016 to 04.01.2017 while filing the monthly returns were accepted by the respondent under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006. It is also seen from the impugned assessment orders that the respondent has completely accepted the inspection report dated 25.01.2017 of the Enforcement Wing Officers, in entirety without subjectively satisfying himself as to the correctness of the said report. The petitioner having raised categorical objections in their reply that the said report dated 25.01.2017 of the Enforcement Wing Officers is incorrect and not in accordance with the provisions of Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, the respondent should have considered the same objectively before passing the impugned assessment orders.

10.Even though the petitioner had furnished all the details and supporting documents in support of their objections in the impugned assessment orders, the same has not been duly considered by the respondent objectively. Instead they have verbatim reproduced the sales figures contained in the inspection report dated 25.01.2017 of the Enforcement Wing Officers of the respondent.

11.Admittedly, in the instant case, it has been seen from the impugned assessment orders that no personal hearing was afforded to the petitioner. Even though, it is mentioned that the request was made by the petitioner for personal hearing under the impugned assessment orders, while granting personal hearing, the respondent ought to have fixed a date for personal hearing to enable the petitioner to present themselves before the respondent and submit their objections. In the instant case, no such specific date was fixed for personal hearing by the respondent. The learned counsel for the petitioner had relied upon the following Judgment in support of his contentions, ***(1) Narasus Roller Flour Mills (2) Narasus Sarathy Enterprises Private Limited Vs. Commercial Tax Officer, (Enforcement Wing), Sankagiri and another*** reported in ***[2015] 81 VST 560 (Mad),*** wherein a learned Single Judge of this Court has held that the Assessing Officer, is not bound by the directions of the inspecting authority, but he shall apply his mind independently and if the dealer makes any representation and is willing to produce records, the officer is bound to allow an opportunity to the dealer.

12.According to the learned counsel for the petitioner, the above referred case is squarely applicable to the facts of the instant case, as in this case also, the Assessing Officer has not applied his mind independently and has accepted the report of the Enforcement Wing Officers in entirety. Further, in this case also, according to him, the petitioner has produced all the records in support of his objections and the same has not been considered by the respondent. The learned counsel for the petitioner relied upon a Single Bench Judgment of this Court in the case of ***Hindustan Unilever Limited Vs. Deputy Commissioner (CT)-II, Large Tax Payers Unit, Egmore, Chennai and another*** reported in ***[2016] 95 VST 296 (Mad).*** The relevant paragraph of the said Judgment is extracted hereunder:-

> *"...16.In my view the report of the enforcement officer could at best be treated, as a first information report gathered based on audit in the place of business of the dealer. If such is the report, it can be only a prima facie material to initiate action in accordance with the provisions of the Act. The first information report is not a conclusive proof of a wrong having been committed. Thus, when the assessing officer issues a show-cause notice based on the information furnished to him by the enforcement, and the dealer responds to the allegations and proposals in the notice, the assessing officer has to objectively analyze the explanation given by the dealer and the materials produced by him to dislodge the information passed on to the officer by the enforcement wing. The assessing officer cannot be bowed down by the observations of the enforcement wing and in several cases that appears to be so and this malady is on account of the fact that the enforcement officers are superior officers to the assessing officer....''*

13.The learned counsel for the petitioner also referred to the following Judgements of this Court, namely, ***a)JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai*** reported in ***[2017] 99 VST 343 (Mad)*** and ***b) G.V.Cotton Mills (P) Limited Vs. The Assistant Commissioner***

(CT) in ***W.A.Nos.234 to 240 of 2015,*** dated ***16.03.2018,*** wherein it has been held that even if the assessee does not ask for a personal hearing, it is mandatory for the Assessing Officer to afford personal hearing.

14.In the instant case, as seen from the impugned assessment orders, the objections raised by the petitioner has not been considered by the respondent objectively. Instead, he has accepted the inspection report of the Enforcement Wing Officials in entirety, without applying his mind independently. Further, in the instant case, no personal hearing was afforded to the petitioner before passing the impugned assessment orders. Therefore, this Court is of the considered view that the respondent has violated the principles of natural justice.

15.For the foregoing reasons, this Court is of the considered view that the Judgments cited by the learned counsel for the petitioner are squarely applicable to the facts of the instant case.

16.In the result, the impugned assessment orders dated 08.02.2019, passed by the respondent in TIN Nos.33335444520/ 2013-14, 33335444520/ 2014-15, 33335444520/ 2015-16 and 33335444520/ 2016-17, are hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders, after giving sufficient opportunity to the petitioner to raise all objections available to him under law and also grant him the right of personal hearing and pass final orders within a period of eight weeks from the date of receipt of a copy of this order.

17.With the aforesaid directions, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

The State Tax Officer,

Ramanathapuram.

+4 CC to M/s.N.INBARAJAN, Advocate (SR-52055 to 52058[F] dated 06/03/2019)

+1 CC to M/s.SPL GP (SR-52598,52603,52604,52606[F] dated 08/03/2019)

sji/mr

W.P.(MD)Nos.5209 to 5212 of 2019
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